Nanda Pandita

THE

DATTAKA-MÍMÁNSÁ,

AND

DATTAKA-CHANDRIKÁ,

TWO ORIGINAL TREATISES

ON

THE HINDU LAW OF ADOPTION,

TRANSLATED FROM THE SANSCRIT,

BY

J. C. C. SUTHERLAND, ESQR.

WITH

NOTES ILLUSTRATIVE AND EXPLANATORY.

AND

A BRIEF SYNOPSIS OF THE LAW,

BY THE TRANSLATOR.

WITH AN

APPENDIX.

BY

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INTRODUCTION.

The Hindoo Law of Adoption is one of very great practical importance in this Country. Numerous questions arise in the Indian Courts in which an intimate acquaintance with the principles of the law bearing on the subject becomes almost unavoidable to the full performance of the duties both of the Bench and the Bar.

The late Mr. J. C C. Sutherland's excellent translation of *Dattaka Mimansa* and *Dattaka Chandrika,* the two most valuable works on the subject of Adoption, published so far back as the year 1834, being out of print, and a large number of important decisions on that subject having since been given by the highest Courts of Judicature in this country and by Her Majesty's Privy Council in England, it has been suggested that a re-print of the work, supplemented by the rulings of the Judicial authorities, would be useful to the public. The Compiler has therefore undertaken this task, and how far he has been successful in his efforts to make the work useful, it is for the indulgent public to decide.

The Compiler needs not add that *Dattaka Chundrica* in Bengal and *Dattaka Mimansa* throughout India are the text books ; and in fact these are the only works that are referred to in cases of adoption under the Hindoo law.

In the Appendix which is subjoined will be found important rulings of the Privy Council and the Sudder Dewanny Adawluts of the Lower and North Western Provinces, as also those of the Madras and Bombay Presidencies, and the Supreme Court of Calcutta &c.

The Compiler has received much assistance from Pundit Grisih Chunder Turkolankar, Pleader Judge's Court 24-Pergunnahs, while the work was going through the Press.

CALCUTTA,
December, 1865.

KISHEN KISHORE GHOSE.

PREFACE.

BY THE

LATE MR. J. C. C. SUTHERLAND.

THE religious ordinances of the *Hindus*, inculcate the indispensible necessity, that, a man should be survived by male offspring for performing his exequial rites and other purposes. In consequence, on defect of real legitimate issue, the affiliation, under prescribed rules, of a kinsman or other person is enjoined : and an individual, thus regularly adopted, acquires the filial rights, which attach to the real son. This law, peculiar perhaps to the *Hindu* code, must often operate harshly towards relatives connected by the nearest ties of kindred : and it is not surprising, that cases of great importance, involving questions, as to the legality of an adoption, should, (and they frequently do,) arise.

The admirable translations by Mr. COLEBROOKE, of the treatise of JI'MU'TA-VA'HANA, and that in the *Mita'kshara*, on the law of inheritance, have laid open to all, that important branch of *Indian* jurisprudence. But, though the judicious notes, subjoined to that part of the latter treatise, which refers to the succession of adopted sons, afford valuable imformation on many questions of consequence, relative to adoption ; still, the want of an *English* version of some work of authority, professedly treating, on the subject, and which might exhibit the law of adoption fully and connectedly, has been sensibly felt. It was with a view to supply this deficiency, that the present publication was undertaken, under the authoritative sanction of Mr COLEBROOKE's advice.

The *Dattaka Mi'ma'nsa'*, is the most celebrated work extant on the *Hindu* law of adoption. Its author, NANDA PAN'D'ITA, has attained considerable literary preeminence—an "excellent and copious*" commentary by him, on the institutes of VISHN'U, denominated the *Vaijayanti*, exists in much esteem, and he likewise was the author of a commentary on the *Mita'kshara*, under the title of *Pratita'kshara*. The *Dattaka Mi'ma'nsa'*, as its name denotes, is an argumentative treatise, or disquisition, on the subject of adoption; and though, from the author's extravagant affectation of logic,

* Mr. COLEBROOKE in his preface to the *Da'ya-bha'ga* &c

the work is always tedious, and his arguments often weak and superfluous—and though, the style is frequently obscure, and not unrarely inaccurate,—it is on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity which it has attained. But whether justly or unjustly, the estimation in which it is held, peculiarly suggests its selection for the purposes of the present publication.

The *Dattaka Chandrika'* is a more concise treatise, on the same subject, by DEVAN'D'A-BAAT'T'A, the author of an eminent compilation of law entitled the *Smriti-Chandrika'* It is a work of authority, and supposed to have been the ground-work of NANDA PAND ITA's disquisition. The doctrines of the two books, vary on some points, and as the work is short, it was deemed advisable to include it in the present publication.

Having said thus much, in explanation of the selection made, the Translator would willingly annex some account of the authors, whose tracts are now presented in an *English* dress. With very limited opportunity however, he has failed in ascertaining any particulars, relative to them, further than that they are both writers of southern *India*. Of the *Smriti-Chandrikn'* of DEVAN'D'A-BHAT'T'A, Mr. COLEBROOKE observes,—"This excellent treatise of judicature, is of great and "almost paramount authority, as I am informed, in the "countries occupied by the *Hindu* nations of *Dravira*, "*Tailinga* and *Carna'ta;* inhabiting the greatest part of the peninsula or *Dek'hin.*"—It is not unlikely, that the *Dattaka-Chandrika'* may have attained equal distinction.

The method in which *Hindu* lawyers, (and indeed *Hindu* writers in general,) treat every subject, is highly uncongenial to *European* taste: and in fact in order to acquire or retain a correct knowledge of the subject, treated on, and the author's peculiar opinions, indistinctly blended, as they often are, with those of others, it is necessary to devote much attentive application,—generally more, than inclination and leisure will admit of being bestowed, by the officers entrusted with the administration of civil justice in *India*.—The Translator

in consequence, in the hope of augmenting the general utility of the work, has compiled, and added a brief Synopsis or summary of the *Hindu* law of adoption; in which, it has been attempted to exhibit succinctly, every topic practically important. This compilation, of course, possesses no intrinsic authority whatsoever. Of the positions, it contains, many are dubious, and some may prove erroneous. Still however, it is hoped that, it will be found useful, in directing the attention, of judicial officers, to the various questions, which may arise in cases of adoption—questions, which in many instances, would not occur to those, who have not made this branch of law, the object of particular study, and which, the native officers, on whom the duty of exposition devolves, might ignorantly or wilfully leave unnoticed, or erroneously solved.

In regard to the law of inheritance, important distinctions obtain, in the doctrines of the *Gaura* or *Bengal*, and other schools of law—and this difference has given rise to controversial writing, and various tracts, professedly treating on that branch of judicature, as received in the different schools respectively.—But the case is not the same, in regard to the law of adoption. Some difference of opinion, may be indeed observed amongst the individual writers on the subject, but it does not appear, that any set of dogmas, has been espoused, or opposed, as the peculiar doctrine of any particular school.—The points, on which any difference of opinion obtains, are noted in the Synopsis; and the Translator has in some instances intimated, what appears to him, the more correct and prevailing doctrine. But compiled, as this work has been, under circumstances, affording little facility for enquiry or collecting information, he has not, from an apprehension of misleading, attempted to debar, or restrict the operation of any particular rule, to the limits of any peculiar tract of country. In fact, such precision is scarcely to be attained. Every contested question or dubious point, which may arise, can only be determined, by reference to the *Hindu* law officers; who, in delivering their opinions, would be guided by the law, as generally received in the part of *India*, where the case might arise.

Much collision however, of decision, would be obviated, and the accuracy of undeviating principles attained, if the opinions, of the subordinate *Pandits*, on any question or point of the nature referred to, were submitted for verification, to the *Pandits* of the *Saddar Dewa'ni Adawlut*.

The translation, particularly of the more abstruse treatise of NANDA PAN'D'ITA, in many places, unavoidably partakes of the obscurity of the original: to render it more intelligible, notes have been occasionally introduced: other notes have likewise been added, in illustration of particular allusions and rites, and rarely to exhibit variations in the reading of the text. It is hoped, that these notes, (they may always be passed by others,) will not prove unacceptable to the curious, and still less to the *Sanscrit* reader, whose study of the original treatises, particularly in the absence of all commentary, it is presumed, the volume now published, is calculated to facilitate. The addition of the Synopsis has superseded the necessity, which otherwise would have existed, of indicating in notes, on what points, the respective treatises may differ, and in what respects, they may be supported, and contradicted by other authorities.

Five years have nearly elapsed, from the commencement of the translation of the treatises now presented to the public. Its progress has always been retarded, and often totally suspended by official avocations and other causes. This circumstance, no doubt, has been productive of some inaccuracies and omissions, which a continuous application to the work would have obviated. Much labour, however, has been bestowed to render the translation correct, and it is hoped, that on the whole, it will be found a faithful version. The Translator is conscious, that from a publication, such as that now offered, no literary reputation can be derived: but he indulges in the hope, that the humble merit of having devoted to an useful purpose, some hours of occasional leisure, will not be denied; and ample indeed, will he regard the remuneration of his labour, if this meed be bestowed, or should the present work, be found in any degree, to facilitate the dispensation of civil justice in *India*.

MONGHER,
1st July, 1819

CONTENTS.

DATTAKA-MÍMÁNSÁ.

A TREATISE ON ADOPTION,

BY

NANDA PAŃDITA.

SECTION I.

Adoption why, and by whom to be observed—By a Woman when valid—By what precept ordained—What Descriptions of Sons to be adopted in the present Age.

Subject proposed.

1. HAVING prostrated himself before VINA'YAKA*, whose two feet are to be adored by the world, NAN'D'A PAN'DI'TA argumentatively discusses the subject of affiliation.

Topics mentioned.

2. By whom; how qualified; at what time; for what purpose; from whom; and who may be adopted as a son? That, on which former writers have not deliberatively treated, is fully propounded here.

ATRI quoted to show that the sonless man only is enjoined to adopt —and why?

3. On this subject ATRI says, "By a man destitute of a son only, must a substitute for the same, always be adopted: with some one resource, *(yasmát tasmát prayatnatas)* for the sake of the funeral cake, water, and solemn rites."

Term "*Aputra*" of ATRI explained. SAUNAKA.

4. A man destitute of a son *(aputra,)* is one to whom no son has been born, or whose son has died: for a text of S'AUNAKA expresses, "One to whom no son has been born, or whose son has died, having fasted for a son, &c.:" Another reading recites, "The impotent man,] or also one whose offspring has died."

3. *By a man, &c.*] This text is here translated so as to conform with the interpretations subsequently given by the Author; this will account for the deviation in some parts from the more obvious sense of the passage.

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* GANESA.

Omission of the sonless man to adopt, argued to be an offence, and authorities in support cited.

5. "By a man destitute of a son, &c." Since it is shewn by this, that the being so destitute, is a cause; in omitting to adopt a son, an offence even is incurred; for the precept enjoining the production of a son being positive, it results that the contravention of it, is the cause of an offence; and on defect of any son in general, exclusion from heaven is declared in this text; "Heaven awaits not one destitute of a son, &c.*" And further, in the following passage, also, a son, in general, is shewn to be the cause of redemption from debt. "A *Brahmana,* immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties: to the gods, for the performance of sacrifice: to his fore-fathers, for offspring. Or he is absolved from debt who has a son, has performed sacrifices, and practises religious duties."

The expression 'only' in the text of ATRI meant to exclude adoption by one having a son.

6. "By a man destitute of a son only."] The incompetency of one having male issue is signified by the term "only" in this passage.

This elucidatory of the word "distress" in a text of MENU.

So explained by APARARKA.

7. By this the word 'distress' (*ápat*) used by MENU in the following text is explained:—"Whom the father or mother during distress, may give as a son, confirming the gift with water, &c†." And it is explained in the same manner by APARA'RKA, "During distress, that is, the adopter having no son‡."

Another interpretation, as in the *Mitákshara*, noticed.

8. Or it may be interpreted 'during distress,' during a famine, and so forth: as in the *Mitákshara*§. "By specifying distress it is intimated that the son should not be given, unless there be distress: this prohibition regards the giver." Accordingly KA'TYA'YANA, "During a season of distress the gift or even sale [of a son] may be made: otherwise

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* Both passages here cited are from the *Védas.*

† MENU 9. 168. Cited also at length in the *Mitákshara* on inheritance, v. Colebrooke's translation, Ch. I. Sect. 11. § 9. and notes, where this and other explanations are noticed.

‡ APARARKA, the author of a commentary on MENU.

§ On inheritance, vide trans. Ch. I. Sec. 11. § 10. and notes.

the same must not be done: this is the injunction of the holy institutes."

Text of MENU on the subject of adoption cited.

9. MENU also, "A son of any description, must be anxiously adopted by one who has none: for the sake of the funeral cake, water, and solemn rites; and for the celebrity of his name." "He who has no son may appoint his daughter in this manner to raise up a son for him, &c. &c."

The indication in scripture, of sons being adopted by persons possessed of male issue, is not conclusive of a revelation to that effect.

10. *(a.)* As for the instance, appearing, of the adoption as sons of DE'VARA'TA and the rest by VISWA'MITRA, and others, although possessing male issue: that from its repugnancy to the revealed law, as contained in passages before quoted, (v. § 5,) must be understood, (in the same manner as the eating the haunch of a dog, and so forth,) not to imply the existence of a revelation [authorizing the act.*]

9. MENU *also.*] Two texts are here quoted. The first, though also cited in the *Dattaka Chundrika* and other works, as from MENU, is not found in the Institutes of that Author. It may, however, be from VRIHAT-MENU, a work frequently quoted in law treatises, but which if extant is very rare. The latter text is from the Institutes: its sequel is thus:—" [Saying,] The male child who shall be "born from her in wedlock shall be mine, for the purpose of performing my obsequies."

MENU, 9, 127.

10. *The adoption as sons of* DE'VARA'TA *and the rest, &c. &c.*] On this subject the following passage from the *Vish'nu-purana* occurs. "The son of VISWA'MITRA was SUNA-SEP'HA, a descendant of BRIGU, given by the gods: subsequently he was called DE'VARA'TA. And afterwards persons called MAD'HU-CH,CH,HANDA, JAYA-KRIST, DE'VA'SHT'AKA, KACH,CH,HAPA and HARITAKA were the [adopted] sons of VISWA'MITRA." VISWA'MITRA was born in the *Kshatriya* or military class, and by excessive devotion raised himself to sacerdotal rank. The passage quoted has reference to that period of his life when he had become a *Brahmana*.

The eating the haunch of a dog.] It is recorded of VISWA'MITRA that when perishing with hunger he ate the haunch of a dog. [v. MENU 10. 108.] It is not however to be inferred from this, that there exists a revelation authorizing the act.

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* It may be here observed, once for all, that words or sentences included within these marks or brackets [ ] are not expressed in the original, but inserted by the translator to complete the sense of the text, or render it more clear.

*(a.)*The translation of this passage is not sufficiently accurate and intelligible. The following may be regarded as the correct version of the original in the text.

The instance of the adoption of DE'VARA'TA and the rest as sons by VISWA'MITRA and others although possessing male issue (notwithstanding that it is repugnant to the revealed law as contained in passages before quoted) must be understood (in the same manner as the eating the haunch of a dog and so forth) not to imply the existence of a revelation (authorizing the act.)

Objection, that the indication of a revelation supersedes that recorded from memory, anticipated and refuted.

11. It is not to be argued, that a revelation recorded from recollection, does not supersede the indication of a [different] revelation: for it is of great authority, being supported by direct passages of revealed law, such as, "Heaven awaits not one destitute of male issue;" and so forth.

But even if admitted, the father having issue, must have the assent of the same to adopt another son.
A revelation to this effect indicated, and objection refuted.

12. But, however, if you pertinaciously insist on the superior cogency even of the indication of a revelation to a revelation recorded from memory, then we accede that a man, though possessed of male issue, may adopt another son with the sanction of such issue, on account of the revelation indicated in the following passage: "By that which our father recognized we abide. We place you before us, you, we follow, &c." Neither should it be urged, that this regards the making an elder son, not the adoption of a son; for the one would be invalid; if the other may not be done. It is useless to enlarge.

The word "son" includes the son and grandson of a son, as appears from

13. "By a man destitute of a son.]" The word son here used is inclusive also of the son's son and grandson, for [through these] the execlusion from heaven, denounced in such passages as "Heaven awaits not one destitute of a son," is removed: since it is declared in the text subjoined,

A text of MENU.

that the mansions of the happy are attained through the grandson and the other. "By a son, a man conquers worlds: by a son's son, he enjoys immortality: and afterwards by the son of a grandson, he reaches the solar abode.*"

11. *It is not to be argued.*] The author anticipates that an adversary may allege, that the instance recorded in scripture of VISWA'MITRA and others adopting another son, though possessed of male issue, indicates the prior existence of a revelation authorizing the act: and that a revelation so indicated is more cogent than the rules of revealed law recorded from memory by ATRI and MENU, in § 3 and 9. This objection he refutes.

12. *Neither should it be urged that this regards.*] The passage quoted is apparently from the *Védas*: but the translator not having succeeded in discovering it, is unable to estimate exactly the scope or merit of the arguments used. It is difficult to suppose that the Author means to assert the analogy between investing a younger son with seniority and the affiliation of a stranger. To reconcile this part satisfactorily it appears necessary to assume, that the passage cited regards the case where a father creates as an elder son, in preference to his other real sons, one previously adopted.

* MENU, 9. 137.

14. Nor can it be alleged that the adoption of a son, [though a grandson and his son exist,] is for the sake of the funeral obsequies; for, from this text it appears the other two also are competent to perform such rites. "The son of a son, and the son of a grandson, like these the óffspring of a brother, &c. &c.*"

They as well as the son may perform obsequies.

15. 'By a man destitute of a son.'] From the masculine gender being here used, it follows that a woman is incompetent [to adopt.] Accordingly VAS'ISH'T'HA ordains, "Let not a woman either give, or receive a son in adoption unless with the assent of her husband.†"

A woman has no authority of herself to adopt, as appears from a text of VAS'ISHT''HA.

16. From this, the incompetency of the widow is deduced, since the assent of her husband is impossible.

It follows a widow cannot adopt.

17. Nor should it be argued, that the assent of the husband is requisite for a woman whose husband is living: because she is subject to control: but not so the widow, for mention being made of woman in general, dependency on control is not the cause, and [were it,] her subjection to the control of kinsmen exists, as shewn in the following text: "On default of these the kinsmen, &c."

Nor can it be said her independency confers such right.

She is even dependent on kinsmen.

18. If it is contended, then, that she may adopt a son with the assent of the kinsmen even, it is wrong: for the term "husband" would become indefinite, and the purpose would not be attained. Now the purpose of the husband's sanction, is that the filiation, as son of the husband, may be complete even by means of an adoption made by the wife.

But may not adopt with their assent.

19. Accordingly, [as appears,] from this aphorism, ("lastly of the mother, first of the father, &c.") the connection of the

SATYA'SHA'D'HA confirms.

17. *As shown in the following text*] The text alluded to, is the following of YA'JNYA-WALKYA: "The father protects her when a damsel. The husband when married: sons in old age: on default of these, kinsmen: a female attains not independence."

19. *Accordingly, as appears from this aphorism.*] In the passage from SATYA'SHA'D''HA the term '*pitroh*' occurs. This may either signify 'to both fathers', viz. the adoptive and natural fathers, or as translated "to both

* From the *Vishnu Purána* v. infra Sect. II. § 60. where the text is completed.

† VAS'ISH'T'HA, 15. 4.

son affiliated, through the wife to both, is declared in the following compendious rule of SA'TYA'SHAD''HA: "Of the son by marriage: the *Kshetraja* or wife's son: the son made: the son of an appointed daughter: the son affiliated through the wife: the son of a marriage, according to the *A'sura* form: the son of a female given as a gratuity, [the relation of lineage] to both parents [obtains.]" Now the connection of lineage to the father, is the filiation as his son; and such filiation proceeds from the sanction only of the father; not from the act of adoption: for the agent of that, in this instance, is the wife.

Explanation of his technical terms by SAVARASWA'MI' cited.

20. "'The son by marriage,' is the son received with a pregnant bride *(Sahod'ha.)*' 'The son affiliated through the wife,' is the son demanded by the wife *(Strí-yáchita,)* or the son obtained through the wife *(Strí-sáttaka.)* 'The son by a female given as a gratuity,' is one born on a damsel obtained, as a fee at a sacrifice. The rest are obvious. Thus expounds SAVARASWA'MI'."

From one of which the necessity of the prior sanction of the husband is inferrible.

21. And in the case in question, the wife being mentioned as the instrumental means, a primary author of the act, is obtained; for otherwise, one accepted in adoption, by the wife, being son to such his mother [only], since his connection, as lineage to her husband, would be wanting, his incompetency to perform the funeral rites of the husband would result; and no father existing, at his marriage, and so forth, the paternal family and other particulars must, of consequence, remain unspecified.

The filiation however of one adopted, by the husband as son of the wife, is complete without the sanction of the wife.

22. If the case is thus, then the assent of the wife is requisite for the husband also; for the purpose [of such sanction], would be the same; [as that of the husband to the adoption by the wife].—This (if alleged) is wrong; for in consequence of the superiority of the husband,

parents" the father and mother. To clear the ambiguity, and confirm the latter construction, which the author adopts, he adduces the other aphorism; "Lastly of the mother, &c."

21. *And in the case in question.*] That of the son adopted through the wife.

by his mere act of adoption, the filiation of the adopt. ed, as son of the wife, is complete, in the same manner as her property, in any other thing accepted by the husband.

V'A'CHASPATI declares the inability of women to adopt, from incapacity to perform the requisite sacrament.

23. Moreover VA'CHASPATI. " " Having offered a burnt offering, *(Hutwá)*, with recitation of the holy words, he should take an unremote kinsman, &c." In this text, the indeclinable past participle '*Hutwá*,' (having offered, &c.) indicating the government of both verbs, by the same agent, being used: the adoption by one only, who may offer a burnt offering, *(Homa)* is valid: therefore women, from their disqualification to perform such sacrament, are incapable to adopt."

Or, if for this a substitute be admissible, they cannot perform the prayers.

24. It must not be argued, that, since under a text of S'AUNAKA, the employment of a priest is according to the approved doctrine, the "*Homa*" may be completed by his intervention: for although that were completed, still would the adoption [by the woman] be imperfect, since she is not competent to perform the prayers requisite for the same.

Which S'AUNAKA has specified.

25. These S'AUNAKA has specified: "And taking him by both hands, with recitation of the prayer commencing *("Devasyatwa, &c.:")* having inaudibly repeated the mystical invocation, "*Angád-angat, &c.*" having kissed the forehead of the child*, &c."

Sudras however may adopt under an express passage which refutes VA'CHASPATI, who denies their power as incapable of the sacrament and prayers.

26. Nor does thus the want of power of *Sudras* follow: for, their ability [to adopt], is obtained from an indication [of Law], conclusive to that effect, in this passage: "Of *Sudras* from amongst those of the *Sudra* class.†" By this VA'CHASPATI is refuted, who says: "*Sudras* are incompetent to affiliate a son, from their incapacity to perform the sacrament of the *Homa*, and prayers prescribed for adoption."

24. *Under a text of* S'AUNAKA.] The part of S'AUNAKA here alluded to, is subsequently cited, v. §.

25. "*Angád-angat, &c.*"] These are the initial words of a passage from the *Védas* subsequently cited at length. "From my several limbs, &c." (v. Sect. 7. § 7.)

A dispensation with respect to prayers.] Prayers here must be considered, as used for the whole of the solemnities.

* V. infra, Sect. 5. § 15.

† S'AUNAKA subsequently cited at large, v. Sect. 2. § 74.

But the inability applies to widows only, and not to women whose husbands live; in whose case the observance of particular solemnities may be dispensed with.

27. Since the [only] power of widows is fixed, to be that of using property during their lives, it is established that they have not power to adopt a son. But it must not be affirmed, that it follows, that in the same manner women also whose husbands are living, are incompetent: on account of their incapacity to perform the burnt sacrifice, prayers, and so forth. For, by the reservation "unless with the assent of her husband," ability to perform what is principal [viz. adoption], being established, from their consequent power to perform what is subordinate [viz. those solemnities], the burnt sacrament, prayers, and so forth, might be inferred. Therefore, since by this passage ("of women and *Sudras* without prayers"), a dispensation with respect to prayers, is established, the adoption [of the women in question,] would be valid without prayers; like their acceptance of any chattel.

A text cited.

The doctrine of the author further supported.

28. Besides, this part of the text, "unless with the assent of her husband," is an exceptive exemption from the general prohibition, contained in the part preceding; "Let not a woman either give, or accept a son;" and in it, the assent of the husband is the cause. Therefore, the widow is incompetent [to adopt]; for, her husband being dead, since his assent is impossible, the exemption destitute of the cause [to give it effect], is without validity; and other means of deducing [her authority,] are wanting. Thus the doctrine of every writer, is rendered even consistent.

Adversary's argument refuted.

29. Nor must it be argued, that this being the case [that is, if the widow may not adopt], her exclusion from heaven would not be obviated. For, that in the following text, is declared by MENU, to be removed by devotion to pious austerity. "Like those abstemious men, a virtuous "wife ascends to heaven, though she have no child; if after the decease of her lord, she devote herself to pious austerity.*" Thus the whole is unexceptionable.

* MENU 5, 160.

30. "By a man destitute of a son." From the singular number being here used, it follows; that the same son must not be adopted, by two or three persons.

One son may not be adopted by more than one father.

31. But would not thus, the law as to the son given, and the rest being '*Dwyámushyáyanas*,' (or sons of two fathers) be contradicted? Accordingly, there is this passage of law, in the *Prayogapárijáta*. "Sons given, purchased, and the rest, are sons of two fathers. Their marriage may not take place in either family; as was the case of SRINGA and S'AISIRA."

Opponent's objection mentioned:

32. It is not so; for, the state as son of two fathers, imports both a natural and an adoptive father; and the prohibition regards two adoptive fathers. Thus there is no contradiction.

And refuted.

33. The substitute is of eleven descriptions: the son of the wife, and the rest, according to a text of MENU which recites, "Sages declare these eleven sons, (the son of the wife and the rest,) as specified, to be substitutes for the real legitimate son; for the obsequies would fail (*Kriyálopát*).*"

The substitute for a son is elevenfold, as shown by MENU.

34. Of these, those are substitutes by right even, who are related, by containing portions of either, of the husband and wife; and the text, [of MENU] intends a restriction [as to the substitutes not so circumstanced.] Again, those who bear not such connection, are substitutes in virtue of passages of Law.

Of these, some are substitutes by inherent right, others from the authority of a text of Law.

31. *As was the case of* SRINGA *and* S'AISIRA.] The translator has failed in discovering particulars of the case here referred to.

33. *The substitute is of eleven descriptions.*] The following is the specification of these succedaneous sons in their order enumerated, by MENU—The '*Kshetraja*,' or son of the wife by a kinsman —The '*Dattrima*,' or son given—The '*Kritrima*,' or son made—The '*Gúd'hotpanna*,' or son of hidden origin—The '*Apavidd'ha*,' or son deserted—The '*Kánína*,' or damsel's son—The '*Sáhód'ha*,' or son received with a pregnant bride—The '*Kríta*,' or son bought—The '*Paunarb'hava*', or son of a woman twice married —The '*Swayandatta*,' or son self-given,—and the '*Saudra*,' or son by a '*Saudra*' woman.—These technical terms are explained fully in Sir WM JONES' translation of MENU, Chap. 9. verses 158 to 179—But more extensive information will be found in Chap. I. Sect. 19. of Mr COLEBROOKE's translation of the *Mitácshara*, and the copious and very valuable notes subjoined.

* MENU 9. 180.

The first class enumerated.

35. For instance: the son of the wife, the son of an appointed daughter, the daughter appointed to be a son, the son of an unmarried daughter (*Kánína,*) the son of a twice-married woman, the son received with a pregnant bride, the son of hidden origin, are principal substitutes, as partaking partially of portions [of the pair,] from their kindred, in some instances, to their mother only, and in others in a small degree, to both parents. The son given, the son bought, the son made, the son self-given (*Dattátma,*) and the son rejected, are substitutes in virtue of express texts of Law. Now, the term 'substitute' is applicable to both classes even by reason of its frequent use [in such general sense;] in the same manner as in the passage "He places bricks (*Srisht'i*)" the term '*Srisht'i*' [intends bricks generally.]

The second also.

MED'HA'TIT'HI cited, who denies that adopted sons can be substitutes.

Though so called, as being succedaneous sons.

36. It has been said by MED'HA'TIT'HI.—"These cannot be substitutes: a substitute is supplied on defect of the means of completion of an act commenced.—Now a son is no such means, for, he is the primary object of the act, of the production of offspring: Hence the term *Putra* (son,) applying even to the son of the wife, and other adoptive sons, the designating these substitutes, is for the sake of shewing respect to the son of the body (*Auris'a ;*) for, the expression 'substitute' as current, denotes a lesser degree benefit. To the same extent, as the real son can confer much benefit, the others are unable."

35. *In the same manner as, &c.*] Allusion is here made, to an elaborate, and obscure disquisition on the passage from the *Védas* quoted, which forms the 17th topic, 4th chapter, 1st Book of the *Mínansá*. It is there proposed, as the subject for discussion, whether the passage in question, contains a precept in itself; or is merely confirmatory of a precept conveyed, in some other passage. The latter position is demonstrated to be the correct one: and it is shewn, in the course of the argument that '*Srisht'i*' occurring in the passage, does not mean particular bricks, at the laying of which, for an altar, and so forth, '*Mantras*' in which that term occurs, are read; but bricks in the general, since the term is frequently used in such general sense.

36. *A substitute is supplied.*] The reader is referred to a subsequent note to § 47.

Means of Completion.] The *Sanscrit* term so rendered is *Anga*. In the language of Logic, it signifies the materials, or means of completing any work.

Doctrine of MED'HA'TIT'HI canvassed.

37. This must be canvassed; for, the position to be proved, being this, that the sons given and the rest are not substitutes; the cause assigned, viz. the not being the means of completing the act of the production of a son, does not apply to the persons affected by the point to be proved: since these, as they already exist, are not liable to be produced.

And further controverted.

38. Again, in the precept enjoining the production of a son, the son being the object to be produced, is no means of completion. But this is the case in respect to that precept only, not any other precept.—For, from passages of Scripture, such as, ("or he is absolved from debt who has issue &c." v. § 5.) this precept resulting, 'Let him procure absolution from debt through a son,' it is established, that the son, as being the instrumental cause of such absolution, is a means of completion: and the instrumentality of the son, is even expressly declared by MENU, in this and other passages, "By a son, a man conquers worlds, &c." (v. § 13.)

An objection disregarded as immaterial.

39. If this be the case: then there may be for the sake of attaining immortality, and the solar abode, a substitute for a grand-son, and great-grand-son—Be it so: we are in nowise affected.

37. *This must be canvassed.*] NANDA PAN'D'ITA assumes the argument of MED'HA'TIT'HI to be this—A substitute is supplied on defect of the means of completing an act commenced:—adopted sons are not substitutes, because a son (real or adopted) being the object of the act proposed, (viz. the production of a son,) is no completive means, (either primary or as a substitute).—Accordingly, (if this be the meaning of MED'HA'TIT'HI,) he correctly states, that the reason assigned does not apply to the adopted sons, or persons affected by the point to be proved: as these already existing are not liable to be produced.—MED'HA'TIT'HI subjoins, "Hence the term *Putra*, (son,) applying even to the son of the wife and othr adoptive sons, &c."—This passage gives colour to the construction, assumed by NANDA, of the argument of the author mentioned: yet, the following syllogism exhibits a preferable, if not the more obvious sense of the argument in question.—A substitute is supplied for the deficient means of an act commenced,—the son (legitimate), being the object of the act proposed (viz the producing a son), is no such means—therefore, sons given and the rest can not be substitutes for the real legitimate son. NANDA, however, rests his refutation of the doctrine of MED'HA'TIT'HI, by showing in the following section, that a son, though not the means of completing the production of a son, is however, the means of accomplishing another act, and consequently there may be logically a substitute for a son, as such means.

The persons affected by the point to be proved.] The single *Sanscrit* term '*Paksha*' is rendered by this circumlocution. In the language of logic it signifies, the party or object whose quality, and so forth, would be affected by the position to be proved.

Argument of opponent anticipated and refuted.

40. Nor does an identity of precept follow from both, [viz. the precept enjoining the production of a son, and that directing the attainment of redemption from debt, through a son,] having a common result: for, in the same precept› the two instrumental causes, (connubial intercourse at due season, and a son, and their several effects, (a son and redemption from debt,) cannot be included: and were they, three contradictory things would become two.

Correct conclusion deduced.

41. Consequently, the son being the instrumental cause in an act, the object to result from which, is absolution from debt: on his failure, the son given and the rest may, without repugnancy, be substitutes: in the same manner, as [at a sacrifice,] where the '*Somá*' plant is wanting, the '*Putika*' is a substitute.

Supported by a passage from MENU.

42. This even is made obvious, by MENU, [who says,] "For, the obsequies would fail," (v. §. 33.) Because the failure of these would ensue; if on default of a legitimate son, the affiliation of a substitute might not take place. Obsequies are funeral rites, consisting in presenting oblations of food and water, and so forth. In the same manner by ATRI also [it is said]; "For the sake of the funeral cake, water and solemn rites," (v. § 3.) Thus the whole is unimpeachable.

And ATRI.

Prohibition by SATYA'SHA'D'HA of the substi-

43 "There is no substitute for mastership, a wife, a son, a country, time, fire, the divinity, an act and word, &c."

40. *Nor does an identity of precept follow.*] The author here anticipates an argument of an opponent. If the two precepts, from implying the same result, (viz. the acquisition of a son,) are identical; the argnment of our author in § 38, would not hold.

Three contradicting things would become two.] that is, if the two causes, and their two effects, specified in the text, be included in the same precept, they would be blended into one cause, and one effect: and in this manner, three contradictory things, (viz. connubial intercourse at due season, a son, and redemption from debt,) would become two—The two causes and their two effects are enumerated only as three; because the son is mentioned, as the effect of one cause, and the cause of the other effect.

41. *Where the Soma plant is wanting, &c.*] This is in allusion to the following rule in the *Vedas*, "Should he be unable to procure the *Soma*, let him cut the *Putikao*" This rule forms the subject of an elaborate disquisition in the 13th topic, 3rd section of the 6th Book of the *Mímánsá* of JAIMINI.

43. *That [is propounded by the author], after having authorized, &c.*] NANDA PAN'D'ITA assumes that the prohibition, of a substitute for a son

as for also the exclusion of the substitute for a son, by this text of SATYA'SHA'D''HA; that [is propounded by the author], after having authorized to one, having no son, a substitute for the same, (in such passages as that subjoined,) for the sake of obviating the recital of the benediction [therein alluded to]. "He recited, for offspring, that benedictory prayer called "*Jyotishmati.*" Accordingly, there is this passage of revealed Law. "He, to whom no son may have been born, should recite for offspring, the prayer commencing '*Jyotishmati.*'"

tute for a son, noticed, and reconciled, as being particular: not general.

44. So in the *Sáman Véda,* in the part treating on father and son, after having by such passages, as "The father of such a one sacrifices, &c." authorized, to one destitute of a son, the substitute for the same: [the subsequent prohibition,] is meant to avoid such particular passages; but not intended to exclude in every case even, a substitute for a son; for that would contradict the following and other passages of recorded Law: "A substitute for a son must be adopted." (§ 3.) "To be substitutes for the real legitimate son." (§ 33.)

This opinion of the author confirmed by a parallel instance in the *Sáman Véda.*

45. It is next deliberated, whether this substitute for a son, who is ordained, is so, in virtue of the precept enjoining the production of a son, or that regarding the funeral obsequies. For allusion has been made, as to both; for instance, with respect to the precept to produce a son, by the first part of ATRI's text: "By a man destitute of a son only, a substitute for the same must always be adopted,"—and with respect to the precept regarding funeral obsequies by the concluding part of the same text: "For the sake of the funeral cake, water, and solemn rites.

Discussion proposed, as to the precept in virtue of which the substitute for a son is ordained.

46. Of these positions, the first is not correct: for there can be no substitute in virtue of the precept to produce a

Not by that directing the production of a son.

by SATYA'SHA'D''HA, here noticed, is only with reference to the particular passage recited, by which that author had previously authorized such substitute, for the particular purpose therein contemplated.

For the sake of obviating, &c.] A different reading of this passage in the original is found '*áviras' ansana*' instead of '*ás'írás'ansana*'—If the latter be correct, (which it does not appear to be,) the translation should be, 'for the sake of obviating the appellation of childless.'

son; as the son, by reason of being the object to be produced, is no means of completion.

Nor that regarding the funeral obsequies.

47. Neither is the second accurate; for, a contradiction would be involved. The substitute for a son is ordained for one having no male issue: but not funeral obsequies performed by such person: and exequial rites, the agent of which is a son, [are ordained]; but there is no precept executed by a son, directing a substitute on his (the son's account. Nor is there a substitute for an agent.

An adversary's mode of reconciling the difficulty anticipated.

48. Or it also may be affirmed, that, the substitute is supplied, with respect to being an agent, in the performance of the act, but not in respect to enjoying the fruit; in the same manner, as in the case of the death of either of the seventeen priests engaged in a sacrifice, *(Satra,)* a substitute is supplied, with respect to being an agent in the act: so also in the case in question.

And controverted.

49. This also is wrong; for the cases are not parallel. In the instance of the sacrifice, the substitute is for one by whom an act was commenced: But in the case proposed, since the act's commencement even, (being completely non-existent,) is impossible, how can there be a substitute? Nor is the commencement of an act by a substitute, admitted by one versed in logic.

47. *A contradiction would be involved, &c.*] The translator is far from confident, that he can satisfactorily illustrate this very obscure part, of which different readings occur. To render it, however, at all intelligible, the following maxims of Hindoo logic, must be premised.—'There can be no substitute for the agent, or object of an act: but only for its materials or means of completion: should these, or any of them, be wanting, a substitute for the same, can be constituted by the agent only.'—Now, if it is asserted, that, the substitute for a son, is ordained in virtue of a precept directing the performance of obsequies, it must be affirmed, that, the person for whose sake the substitute is supplied, and the performer of the obsequies are the same.—For the person for whose sake the substitute is supplied, is the individual who constitutes the substitute. Now, as an agent only, can constitute a substitute for the means of completing his own act; it follows that the individual in question would be the agent of the obsequies. But these are admitted to be distinct person: and thus a contradiction would be involved. Accordingly, the author, with reason, says,—"*The substitute for a son, &c.* Moreover, a son being the agent of the act enjoined in a precept, directing the performance of obsequies, the author further refutes the doctrine, that a son is ordained, in virtue of that precept, by adding in allusion to the maxim above specified, "*Nor is there a substitute for an agent.*"

48. *Or it also may be affirmed that.*] The author anticipates, that it might be alleged in support of the position which he controverts, that a substitute might be supplied, in virtue of the precept proposed, merely as the performer of the act required: as in the case alluded to in the text.

50. Or it may be next alleged, that there is a precept regarding oblations of food, and so forth, performed only by one having no son, at his own funeral repast, *(Srád'ha)*, taking place during his life. In virtue of this only, is a substitute [ordained]. This is likewise incorrect: for, if [in this case] there might be the substitute for a son, the precept itself regarding the funeral repast, to take place during the life of the individual, would be of no effect.—Besides, himself being the agent in the performance of the funeral repast, taking place during his life; the substitute would be even for himself, not for the son: since the son [in this case] is not the agent.

Another mode anticipated and rejected.

51. Therefore, in virtue of the two precepts first mentioned, there can be no substitute for a son. Moreover, the assigning also as a reason, "For the sake of the funeral cake, water and solemn rite," (§ 3.) would be inapposite; for it would not apply to the person to be affected by the point to be proved. It has already been said, that exequial-rites, performed by the man having no son, are not suggested.*

Conclusion, that in virtue of neither of the precepts proposed, is a substitute ordained, supported by an argument applicable to both.

51. *Moreover, the assigning also as a reason, &c.*] The following is hazarded as an illustration to this obscure part.—The author, adverting to the text of ATRI, (§ 3,) by which the constituting a substitute for a son, by one having no male issue, is enjoined, proposed a discussion, in respect to the particular precept, in virtue of which such substitute is ordained; accordingly, he suggests and rejects two, viz. that which enjoins the production of a son, and that which directs the performance of exequial rites; and he here uses an additional argument, to support the rejection. If it be held that the first of these precepts be that required, then the '*Paksha*,' or individual to be affected by the point to be proved, is the man wanting a son; the point to be proved, his obligatory production of the same; and the reason (that used by ATRI), 'on account of exequial rites.' If the second be regarded as the precept; the '*Paksha*' and reason would be the same, as in the first supposition; and the point to be proved, his obligatory adoption of a substitute. Now it is a rule of logic, that the reason assigned, should bear on the person affected by the point to be proved; and this is not the case in either of these suppositions. To be so, such person (here the man wanting male issue), should be the performer of the exequial rites: but it has been shown that he is not.—It is to be feared, that the author's extravagant affectation of logic, has here illuded him into an error.—His argument is good, on a supposition, that the reason in question is logical, or one of the premises of a syllogism—It is obvious, however, that it is not so, but is rather used as a cause or motive.

* Vide Supra, § 47.

Difficulty solved, and a precept shown, in virtue of which a son is ordained.

52. The question is thus solved : " By a son, a man conquers worlds, &." In virtue of the precept, implied in this and cther texts, and supported by confirmatory passages, (such as " Heaven awaits not one destitute of a son ;") on failure of the legitimate son, the son of the wife, and the rest, are ordained to be, the eleven-fold substitute ; and in the precept alluded to, an act being required to operate intermediately, in completing the state of heaven, and the son, severally, as the effect to be produced, and the efficient means : it is added, " For the sake of the funeral cake, water and solemn rites."

Import of the term 'always' in ATRI'S text shown.

53. The term 'always' (§ 3) signifies, that in the present case, no definite period is required, as in such cases, as [that contemplated in this passage,] " The barren woman, in the eighth year, is to be superseded."

Other terms explained.

54. The funeral cake [the '*Srád'ha,*' or funeral repast. —Water] that is, the presenting water in the two united palms, and so forth. solemn rites] meaning rites in honor of the deceased, cremation and the like. These are the cause *(hetu)* :

A distinct affiliation not necessary for each exequial ceremony.

55. The reason occasioning the adoption is the cause. This, from being used in the singular number, shows that these ceremonies, collectively, are the cause, and not individually ; and consequently, the meaning is, that there is not a distinct affiliation, severally for each ; but one adoption

52. *In virtue of the precept, implied in this and other texts, &c.*] The author here shows a precept, in virtue of which, the substitute for a son is ordained ; to which none of the objections made to the two first suggested, apply.—In the first place, in the precept enjoining the conquest of worlds by a son, the son is neither the object or the agent, but the means of the act ; therefore, there may be a substitute for a son, in virtue of this precept : again, the objection just made to the two precepts, first suggested, does not apply to this precept. Here the '*Paksha,*' or person affected by the point to be proved, is the son : that point, that he is an efficient means for the conquest or attainment of heavens ; the reason, of course, as before ; and it here accurately applies to the '*Paksha*' : that person, and the performer of of the exequial rites, being identical.

55. *This, from being used in the singular number.*] ATRI has in his text '*pin'd'ódaka kriyáhetoh*' translated, 'for the sake of the funeral cake, water

only, on account of the whole: for, on default of a son, the failure of the oblation of food, and other rites, is the consequence.

56. Accordingly, MENU says, "Sages declare these to be substitutes; for, the obsequies would fail *(kriyálopát*)*." Here, this part, "for the obsequies would fail," is a reason subjoined on a negative hypothesis; "The meaning is,—because, if there were no substitute for a son, the obsequies would fail."

As confirmed by a phrase from a text of MENU.

Which is explained.

57. Or, there may be this disjunction, [of the compound term *'kriyálopát' kriyá*×] *alopát—alopát*, would then be, the fifth or ablative case, used after the rejection of the indeclinable past participle, formed by the affix *'lyáp*:' The meaning is,—for the sake of preventing a failure.

Another exposition of it suggested.

58. "On failure of the son, let the wife be, &c."† although by this and other passages, the capacity of the wife, and other [heirs] also, to perform the obsequies, is declared:

Though the wife and the rest, may perform obsequies, yet, these rites performed by

and solemn rites.'—Here, '*hetoh*' ('for the sake') is the fifth or ablative case singular, of '*hetu*,' a cause.

57. *Or there may be this disjunction, &c.*] In disjoining the compound term '*kriyálopát*,' occurring in the text of MENU (§ 33), *kriyá + lopát*, or *kriyá + alopát*, may be obtained.—For, by the rules of orthography: *kriyálopát*, would be equally produced, whether *lopát*, or *alopát*, were subjoined to *kriya'*:—that is, in the first case, no permutation of letters would take place: and in the second, a single long *á* would be substituted for the final long *á* of *kriyá*, and initial short *a* of *alopát*. Accordingly, the author, after preferring that mode of construction, by which '*lopát*' would be read, here indicates the other, which would give '*alopa't*.—This latter is, in fact, that adopted by the scholiasts of MENU.

Used after the rejection of the indeclinable past participle, formed by the affix 'lyap.'] The term '*lyap*' in the text, is used to denote the participle, of which it is the grammatical affix: its first and last letters are servile. The author alludes to an emendatory rule of KA'TYA'YANA, on PANI'NI, 2-3-28, the result of which is this,—If a mode of expression, composed of an objective or accusative case, and the indeclinable participle ending in '*lyap*,' might have been used, but is rejected: and the ablative, or fifth case, be adopted; it denotes the object to such participle; thus, "he sees from the top of the house (*prasadát*)" that is: "having mounted (*aruhya*), the top of the house, he sees." In the same manner, the author regards the ablative case '*alopát*,' where, the second mode of construing the term *kriyálopát*, occurring in MENU'S text (§ 33), may be preferred; thus, "sages declare, ———on account of preventing a failure of obsequies (*kriya'lopat*):" that is, 'having intended a prevention of a failure of obsequies,' (*kriyálopam-udes'ya.*)

58. *As an alternative results.*] The rites might be indifferently performed by the son, or wife and other heirs.

* Vide supra, § 33.

† SANK'HA. The sequel is thus, "[The performer of the funeral rites:] on her default the whole brother."

them, are not so beneficial as those executed by a son.

still it must be unquestionably affirmed, that from the authority of such passages as this ("Heaven awaits not one destitute of a son)," the mansions of the happy, attainable by obsequies performed by a son, are not acquired by such rites executed by the wife, and the rest. For, otherwise, the wife and other heirs, of one destitute of male issue, being competent to perform rites, which would be equally effective; the specification, of failure [of the son], would be unmeaning; as an alternative results, from such equality.

Conclusion, that a substitute for a son is necessary for a spiritual effect.

59. Hence, for the acquisition of some particular heaven, to be attained by obsequies performed by a son, the substitute for a son is indispensable. And, it is said by MED'HA'TIT'HI, "Now, as for the assigning there, the first "gradation to the legitimate son, that is not productive of "any temporal effect, [but, on account of] excessive spiri- "tual benefit: to the same extent, as the legitimate son, "can confer much benefit, the others are unable—and 'sub- "stitute,' as generally accepted, implies a diminution of "benefit."

MED'HA'TIT'HI on this subject noticed.

Interpretation by that author of the phrase '*kriyálopat*' cited.

60. *Kriyálopát.*] The '*kriyá*' or act, here alluded to, is from "'*kriyate,*' what is done:—the precept [by which it "is enjoined], 'offspring must be produced.' Let there be "no omission *(lopa)*, of this.—This precept is peremptory; "in some manner, or another, it must be accomplished by the "householder. Of the offspring alluded to, the real legitimate "son, is the first in rank; should such not be acquired, these "descriptions of sons [that of the wife and the rest], must "be resorted to."—This interpretation by that author [MED'HA'TIT'HI] alone, must be canvassed. Is it said [by him],

And canvassed: either of two meanings attributed to the author.

60. *Kriya or act, &c.*] MED'HA'TIT'HI, the author of a commentary on MENU, explains the term *kriya*, occurring in this phrase, as signifying the act of acquiring a son. This is contrary to the interpretation of other scholiasts, and general acceptation: according to which, in this and similar passages, it bears its secondary sense of 'obsequies' or 'solemn rites,' &c.

By the householder.] The *Grihí* or householder, is the second of the orders or stages *(as'rama)*, prescribed for the devout. These are thus enumerated, in Mr. COLEBROOKE'S translation of the *Kosha* of AMERA SINHA.—1st. The religious student *(Brahmachári)*, who has received investiture, and is unmarried.—2d. The householder *(Grihí)*, or married man.—3d. The hermit or anchoret *(Vanaprast'ha)*.—4th. The mendicant or ascetic *(B'hikshu.)*

that the precept directing the adoption of the son given, and the rest, is a substitute for that directing the procreation of a son; or perhaps that the son given, and the rest, are the substitutes for a legitimate son?

The first shown to be inaccurate.

The second also.

61. Of these [supposed meanings], the first is not correct: for the substitute of an act, is forbidden in the passage "of the divinity, fire, a word, an act, &c." Neither is the second accurate; since it would be at variance with preceding passages [of the same author]; such as, "These [the wife's son, and the rest,] cannot be substitutes, &c." (§ 36). For in this passage it is declared, there can be no substitute for a son; as a son, by reason of being the object to be produced, is no means of completion.

Correct interpretation of the term '*kriya*' shown.

62. Therefore, from the term '*kriya*' [in the expression '*kriyálopát*,]' the precept to produce a son, cannot be inferred: but on the contrary, funeral rites alone must be understood; on account of unity of import, with the text of ATRI, which expresses: "For the sake of the funeral cake, water and solemn rites." It would be useless, [to enlarge.]

Explanation of ATRI'S text resumed.

63. '*Prayatnatas*' *(resource)*]. The affix '*tas'il*' of the fifth case, is used to form this word, for the sake of agreeing in construction, with the preceding terms "*yasmát tasmát*" *(with some one)*: and consequently the meaning is, that by some one resource (or mode) whatsoever, a substitute for a son is to be affiliated.—And, although in that text, any resource in general, is mentioned, still, since eleven descriptions of sons have been ordained, eleven resources only, are recognized.

The son given, and the real legitimate son, however, are now only admitted.

64. "Sons of many descriptions, who are made by an-
" cient saints, cannot now be adopted by men: by reason
" of their deficiency of power, &c." On account of this

63. *The meaning is, that by some one resource, &c.*] The author presently, will apparently forget this, his interpretation, of the term *prayatnatas*, occurring in ATRI's text. In Sect. 4. § 21. he suggests, that the same word, in a text of S'AUNAKA, may signify 'on account of the distress of the adopter:' viz. the want of male issue. This he confirms by referring to the text of ATRI; thereby indicating, that the word in question, has there a similar import.

text of VRIHASPATI, and because, in this passage, ("There is no adoption, as sons of those, other than the son given, and legitimate son, &c.") other sons are forbidden by S'AUNAKA, in the *kali* or present age; amongst the sons, however, [who have been mentioned,] the son given, and the legitimate son only, are admitted.

Term 'given' illustrative of others on account of a text of PARA'S'ARA.

65. The term "given" is inclusive also, of the sons made *(kritrima)*, on account of a text of PARA'S'ARA, on the occasion of treating on the law of the *kali* age, which expresses, "The son of the body, *(aurasa)*, the son of the wife, also the son given, the son made, &c."

The mention there of the wife's son, does not prove that such son, in its technical sense, may now exist.

66. Nor is it to be argued from this, that, in the *Kali* age, there may be the son of the wife [technically so called:] for such is forbidden by the mere prohibition against the appointment in that age, [of a wife to raise issue to her husband by another.]

Contrary argument of an adversary anticipated.

67. Should it be contented, that, then an option would proceed, from the wife's son, being ordained, and forbidden [by dfferent authorities.] It is wrong, for many objections would be the consequence.

And the mention of the expression reconciled.

68. Again, if it be asked, in what light then, the mention of the son, of the wife, in this passage, [must be regarded]? We reply, as an epithet of *Auras'a*, (the son of the body.) Accordingly MENU says: "Him whom a man has begotten on his own wedded wife, let him know to be the first in rank, as the son of his body, *(Auras'a)*."

67. *Many objections.*] In the original 'eight' occurs: a definite for an indefinite number.

SECTION II.

Who is to be adopted ?

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1. OF these two : the rules regarding the '*Dattaka*' or adopted son, are now propounded. The three points, on this subject, to be considered, are,—who is to be adopted ? how qualified ? and in what manner ?

Rules regarding the adopted son.

Topics suggested.

2. As to the first of these points, S'AUNAKA has declared ; "the adoption of a son, by any *Brahmana,* must be made from amongst '*sapin'd'as*' or kinsmen connected by an oblation of food ; or, on failure of these, an '*asapin'd'a,*' or one, not so connected, may be adopted : otherwise let him not adopt."

S'AUNAKA on the subject of the first cited.

3. " From amongst '*sapin'd'as*' "—That is, from amongst such kinsmen, extending to the seventh degree inclusive ; and the term being used in its general sense, it follows— 'from among such kinsmen belonging to the same or a different general fmily (*gotra*).'

Import of the term '*sapin'd'a ;* who may be of the same, or a different general family.

4. Of these, with respect to the being of the same general family, this text of VRIDD'HA GAUTAMA, is an authority—" the sons given, purchased, and the rest, who are adopted, from those of his own general family, by observance of form, acquire the state of lineage (*gotratá)* [to the adopter]. But the relation of *sapin'd'a,* is not included."

VRIDD'HA GAUTAMA cited as authority.

5. State of lineage (*gotratá*)] that is, the condition of offspring (*santatitwa*) ; for, a passage from the *Kálika Puráṇa* recites—" Sons given, and the rest, though sprung from the seed, of another, yet being duly initiated [by the

The term "*gotrata*" used, interpreted.

4. *The text of* VRIDD'HA GAUTAMA.] NILA KANT'HA, in the *Vyavahára Mayúk'ha*, denies the authenticity of the text quoted.

5. *And in the* TRICA'ND'A, &c.] In the text, a verse from the *Tricánd'a* is cited at large.

adopter], under his own family name, become sons [of the adoptive parent]"—and in the *Tricándá*, or vocabulary of AMERA SINHA, the terms '*santati,*' and '*gotra,*' are exhibited with others, as synonimes, signifying 'race or lineage.'

Supposition that the term in question might mean connection by family, refuted.

6. Nor, by the term '*gotratá,*' is connection by the same general family, declared : for, the declaration would be unnecessary, as that connection is obvious, from the affiliation, taking place only from amongst those of the general family, of the individual himself.

Import of the close of the text in § 4.

7. "But the relation of *sapin'd'a* is not included"—By this, in the case of the affiliation of one not being a '*sapin'd'a,*' such connection, as extending to both the fifth and seventh degrees, is barred.

Authorities as to the adoption of one of a different family: MENU and VRIHAT MENU.

8. With respect to the affiliation of one belonging to a different general family, the following passages, severally, from MENU, and VRIHAT MENU, are authorities. "A given son, must never claim the family, and estate of his natural father, &c."* "Sons given, purchased, and the rest, retain relation of *sapin'd'a,* to the natural father, as extending to the fifth and seventh degrees:—like this, their general family, [which is] also, that of their adopter."

Subordinate class propounded.

9. That which has been explained, is the primary class; in case, [the adoption] cannot be made from this, the author [S'AUNAKA] propounds a subordinate class; "on failure of these, an '*asapin'd'a,*' &c." 'On failure of these,' that is of the *sapin'd'as,* or kinsmen connected by an oblation of food, a person, not so connected (*asapin'd'a*), must be affiliated.

Which may also be subdivided.

10. Those not *sapin'd'as,* are kinsmen beyond the seventh degree, and persons not allied at all. And these also, are

8. *Passages severally, from* MENU, *and* VRIHAT MENU.] The authenticity of that attributed to VRIHAT MENU, is denied in the *Vyavaha'ra Maya'k'ha*

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* MENU 9. 142. This text is subsequently quoted at large, v. infra. Sec. 6. § 6.

of two descriptions: those belonging to the same, and those belonging to a different general family. For this also, the passages before cited, are authorities.

11. Of what has preceded, this is the abstracted meaning.—The '*sapin'd'a*' belonging to the same general family, is the first [in rank]: on failure of him, such kinsman of a different general family.

Result deduced from what has preceded.

12. Although the "*sapin'd'a*" of a different family, and a person of the same family, but not a "*sapin'd'a,*" are both equal, with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim, from the connection as "*sapin'd'a,*" is preferable to him claiming by family; and hence it is, that though of a different family, a "*sapin'd'a,*" even from the family of the maternal grandfather, must be adopted.

Sapin'd'a of a different family preferable to one of the same family, not a *sapin'd'a.*

13. In every case, on default of a "*sapin'd'a,*" one not related as such, is to be adopted: of this description, the kinsman allied by a libation of water (*Sodaka*), to the fourteenth degree, being of the same general family, is the nearest;—on failure of him, one not so allied, but of the same general family, to the twenty-first degree; and on defect of such also, one, not belonging to the same general family, and not related as a '*sapin'd'a.*'

Deduced result, continued.

14. S'A'KALA has declared this. "Let a regenerate man, being destitute of male issue, adopt as a son, the offspring of a '*sapin'd'a*' kinsman: or next in order, the son of one of the same general family (*sagotra*): on defect of such, let him bring up one born in a different general family."—By the expression '*sagotra,*' those allied by a libation of water (*sodaka*), and belonging to the same general family, are included.—Now, in this text, the proximity [in order], of each successively, is particularly shown.

Confirmed by S'A'KALA.

15. VAS'ISHT''HA, also propounds the same—"should take an unremote kinsman or near relation of a kinsman, &c."

VAS'ISHT''HA also.

Illustration of the passage cited.

16. The construction of this passage is thus. He is an unremote kinsman, who is both a kinsman, and in a near degree;—meaning, a near '*sapin'd'a*.—Now, propinquity is of two descriptions,—by belonging to the same general family,—and by the intervention of few degrees. Of those allied by propinquity, the '*sapin'd'a*,' of the same general family, and removed by few degrees, is the principal; on default of him, a '*sapin'd'a*' of the same general family, though removed by many degrees; on failure of such, a *sapin'd'a* belonging to a different general family: on defect of this latter also, "the near relation of a kinsman,"—meaning, of a '*sapin'd'a*' kinsman, the near relation or '*sapin'd'a*'—being one allied to the individual himself, by libations of water (*sodaka*), but not his '*sapin'd'a*.' Such is the import which is deduced.

Illustration continued.

17. Relationship also, there alluded to, is of two descriptions;—by belonging to the same general family,—and by the intervention of few degrees. The first in rank, is the '*sapin'd'a*' kinsman, of such kinsmen of the man himself, removed by few degrees, and belonging to the same general family, as that person, though not his own '*sapin'd'a*.' On defect of such, the '*sapin'd'a*' of his own '*sapin'd'a*' kinsmen, being of the same general family, though removed by many degrees.—One connected by a libation of water, is intended.

And concluded, by showing that one neither a *sapin'd'a*, or *sagotra*, is meant, as an object of adoption, in the last instance.

18. If a '*sapin'd'a*,' or '*sodaka*' relative, cannot be procured, one belonging to the same general family, to the twenty-first degree, must be adopted: should none such exist, a person of a different family, although not a *sapin'd'a*, must be adopted; for the text of S'AUNAKA (§ 2.) expresses, "or, on failure of these, an '*asapin'd'a*':" and this is indicated by VAS'ISHT'HA, [who says,] "But if doubt arise, let him set apart " like a *Sudra*, one whose kindred are remote."

S'AUNAKA cited.

VAS'ISHT'HA.

Passage of VAS'ISHT'HA quoted in the preceding §, explained.

19. He whose kinsmen are distant, is 'one whose kindred are remote:' the meaning is,—one not allied by an origin from the same stock, or by the relation of '*sapin'd'a*.'

The doubt, alluded to in this passage of VAS'ISTH'A, regards lineage, disposition, and so forth: it arises in the case of one unconnected, as a '*sapin'd'a,*' and not sprung from the same general family. This is also implied in the passage, "otherwise let him not adopt." (v. § 2).

In all instances of adoption, the adopter, and adopted, must be of the same class.

20. Although, none other, than such as are connected, as '*sapin'd'as,*' and not so, can exist: still, since by this sequel of the text, ("of all, and the tribes likewise, in their own classes only, not otherwise,*") those, connected as *sapin'd'as,* and not so, are qualified, as being of the same class; both *sapin'd'as,* and those not such, who do not belong to the same class, are excluded [from being adopted]. For they might be inferred as a subordinate class, by the rule of logic, "What is not denied is admitted."

As is ordained by VRIDD'HA GOUTAMA.

21. Accordingly, VRIDD'HA GAUTAMA† forbids the participation in inheritance, of one, not of the same tribe, thus,—"or should one of a different class be taken as a 'son, in any instance, let him (the adopter) not make him a "participator of a share—this is the doctrine of S'AUNAKA."

One of a different class cannot be adopted.

22. Hence, it is established, that one of a dfferent class cannot be adopted as a sou.

MENU indicates as much whose expression 'alike' in the text here cited, means of the same class.

23. Accordingly MENU. "He is called a son given, whom his "father, or mother affectionately gives,. as a son, "being alike, &c.‡" [Alike,] that is,—of the same class; for a text of the chief of the saints (YA'JN'YAWALKYA) expresses: "This law is propounded by me, in regard to sons, equal by class."

An apparently conflicting use of the same term, by

24. As for what has been said by MENU himself. "He "is called a son bought, whom a man, for the sake of having

24. *As for what, &c.*] The author has copied this § nearly verbatim, rom the *Mita'kshara* on inheritance.—The reader is referred to COLEBROOKE'S translation, chap. 1, Sec. 11. § 16, and the note subjoined.

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* S'AUNAKA, subsequently quoted, v. § 74.

† By an error of the author, or his transcriber, VRIDD'HA GAUTAMA has been written for S'AUNAKA, v. infra § 32.

‡ MENU, 9. 168.

that author, reconciled.

"issue, purchases of his father and mother: whether "the child be like or unlike:*" this must be interpreted, whether like, or unlike,in qualites, not in class.

And contrary interpretations by MED'HA'TIT'HI, and in the *Kalpataru*, refuted.

25. "Alike not by tribe, but, by qualities suitable to the "family: accordingly, a *Kshatriya,* or a person of any "other inferior class, may be the son of a *Brahamana.*" As for this interpretation of MED'HA'TIT'HI, and one in the *Kalpataru,*" a *Sudra* even, is certainly a son, such is the meaning:"—these both must be rejected,on account of their repugnance, both to the passage from YA'JN'YAWALKYA before cited, ("This law is propounded by me in regard to sons, equal by class,")—and the text of S'AUNAKA, which recites, "[in their own] classes only: not otherwise†."

The *Sudra* son propounded by MENU, is one born out of wedlock of *Sudra* parents.

26. "A son self given, and a son by a *Sudra,* are the six kinsmen, but not heirs‡."—The enumeration by MENU in this passage, of the son by a *Sudra,* as a substitute, must be explained, as meaning, that, one procreated by a *Sudra,* on a female slave, but not born in wedlock,inasmuch, as he is not a principal son, is a substitute for the same. For, a text of YA'JN'YAWALKYA expresses," Even "a son begotten, by a *Sudra* on a female slave, may take a "share by the father's choice. But, if the father be dead, "the brethren should make him the partaker of the moiety "of a share: and the one who has no brothers, may inherit "the whole property, in default of daughter's sons§."

This is supported by YA'JN'YAWALKYA.

25. *As for the interpretation of* MED'HA'TIT'HI.] This gloss of MED'HA'TIT'HI, is noticed by Mr. COLEBROOKE, in his translation of the *Mita'kshara* on inheritance. Vide note, subjoined to ch. 1. Sec. 11. § 9, in which the text of MENU here cited in § 23, is quoted.

26. *By* MENU *in this passage.*] The text, of which part is quoted, in its complete state, is thus—"The son of a young woman unmarried: the son of a pregnant bride: a son bought: a son by "a twice-married woman: a son self given, and a son by a *Sudra,* are the six kinsmen; but not heirs."—The author obviates the inference, which might be drawn from this. that a son by a *Sudra* woman, and consequently of a servile class, may be a subsidiary son of his natural father of a superior tribe.

* MENU, 9. 174.
† V. Infra, § 74. ‡ MENU, 9. 166. § YA'JN'YAWALKYA, 2. 134, 135.

27. Hence, the explanation by APARA'RKA, of the term in question, is only correct; "alike, being of the same tribe, &c." YA'JN'YAWALKYA also—"This law is propounded by me in regard to sons, equal by class."

Conclusion that the term "alike" means of the same class.

28. Now, amongst near *sapin'd'a* kinsmen of the same general family, a brother's son only, must be affiliated: and this doctrine is recognized also by VIJN'YA'NESWARA.*

A nephew must be first selected for adoption.

29. By the position, that, 'a brother's son only must be affiliated,' it is meant, that, the son of a whole brother only, must be affiliated. MENU declares this:—"If one, "among brothers of the whole blood *(ekajáta)*, be possessed "of male issue *(putrabán)*, MENU pronounces, that, "they all are fathers of the same, by means of that son†."

He must be the son of a whole brother: as shewn by MENU.

30. In this text, the state of brothers, as adoptive fathers, being propounded, their incapacity to be the objects of adoption follows.

From the text cited, it is argued, a brother cannot be adopted.

31. Of the whole blood.] By this expression, it appears, that, this condition of adoptive fathers, alluded to, applies to those only, begotten by the same father, on the same mother, not to such as are born of a different father or mother.

And brothers of the half blood, can not be the adoptive parents, such as there alluded to.

32. Brothers.] From the masculine gender being used, it results, that, brothers and sisters also, of the whole blood, are not reciprocally the adoptive parents of the son [of any one of them]: and this conclusion is confirmed by the mention of two terms [in that gender]. VRIDD'HA GAUTAMA declares the same. "In the three superior "tribes, a sister's son is no where [mentioned as] a son.‡"

The masculine gender being used, sisters are not included, in this reciprocal state of adoptive parents.

32. *By the mention of two terms, &c.*] In the original of the text of MENU, "of the whole blood *(ekaja'ta)*" is an epithet of 'brothers,' agreeing with that term, in gender, case, and number.—These may be the two terms alluded to, or, they may be, 'brothers,' and the term 'one' represented in the original, by the word '*ekah*,' which is in the nominative case, and masculine gender, of the singular number.

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* Author of the *Mita'kshara*, vide translation, chap. 1. on inheritance, Sec. 11. § 36 † MENU, 9. 182.

‡ This passage is a portion of S'AUNAKA's text, cited in § 74. It may belong however to both authors: but it is most likely, that in the same manner as in the preceding instance, the author has here erroneously substituted the name of VRIDD'HA GAUTAMA, for that of S'AUNAKA. (V. § 21.)

VRIDD'HA GOUTAMA supports this.

33. The expression 'sister's son' is inclusive of the son of a brother also. Hence, this meaning is deduced, that a brother's son must not be adopted by a sister: for, brothers only are mentioned to be adoptive parents [in the text of MENU, § 29.]

And completely, as the term 'sister's son' is explained to include a brother's son.

34. "'Brother' and 'son' when occurring in combina- "tion, severally, with 'sister' and 'daughter,' are retained; "[the other terms being omitted.†"] Although, by this rule of grammar, [the term 'brothers'] may be a compound, formed by the retention of one term, and omission of another: and thence, the reciprocal affiliation, by a brother and sister, of a sister's and brother's son, respectively, might be inferred: still, those are '*ekaja'ta,*' whose *játa* or *ja'ti* (kind), is the same: for, these words with '*samánya,*' are cited in the dictionary, as synonymes, signifying kind or sort ‡; [therefore,] since by '*ekajáta,*' the epithet of 'brothers,' it is intimated, that those [signified by that term] are of the same kind, the affiliation, by brothers, who are male, of a brother's son, and by sisters, who are female, of a sister's son, would be established. The adoption of a brother's son by a sister, or a sister's son by a brother, could not take place, on account of the difference of their kind, in being male and female [respectively].

In MENU's text (§ 29,) the epithet *ekajáta*, signifying of one kind, bars the reciprocal affiliation, by brothers and sisters, of their sons respectively inferrible by construing 'brothers' as a complex term standing for both.

35. But the single expression '*ekajáta,*' once uttered, cannot bear two meanings, namely, 'being of the whole blood,' and 'being of the same kind:' for, this maxim in logic would be contradicted; "A term once uttered, "conveys a single meaning."—Should this objection be made, it is wrong: for, the word '*sansrisht'a,*' occurring in the following passage, has been explained by VIJN'YA'NESWARA,

Objection, that the term '*ekaja'ta*' cannot at once import two meanings over-ruled, by the authority of VIJN'YA'NESWARA who explains, in two distinct senses, a word used in a text of YA'JN'YAWALKYA.

35. *The word* 'sansrisht'a,' *occurring in the following passage, &c.*] The very obscure text, of which a portion is cited, is the following of YA'JN'YAWALKYA. "A half brother, being again associated, "may take the succession, not a half brother, though not re-united; "but one united, (*sansrishta'*) &c. &c. &c"—In his gloss on this passage, VIJN'YA'NESWARA, the author of the *Mita'kshara,* holds that the word 'united,' (in the same manner as the expression 'not reunited'), is connected, with both its preceding and following terms;

† PA'NINI, 1. 2. 68. ‡ Dictionary of AMERA, Book I. chap. 1. sect. 4. verse 9.

as signifying a whole brother, and reunited as a coparcener: "*. . . .* though not reunited; but one united (*san-*" *srisht'a*) [by blood, though not by coparcenary] may ob-" tain the property, and not [exclusively] the son of a differ-" ent mother.*" So even, in the present case likewise. Thus, there is no inconsistency. Sufficient has been said.

The case of two brothers, is included by the plural number, in which, 'brothers' is expressed.

36. The plural number is inclusive also, of the dual: for, two are contained in many: and the being son of two fathers is shewn in the following text: "If he be son of " two fathers, let him designate both, in each distinct obla-" tion of food."

The force shewn of the word 'one' used by MENU.

Who sanctions the affiliation of the only son, of a single brother.

37. "If one"—this is, 'if one even.'] By this, where two or more are the fathers, the author implies *a fortiori*, the more easy adoption of a son, by the others, destitute of the same: he does not bar the affiliation of the only son of a single brother: on account of,—the cogency of the specification of the term 'one,'—and the singular number, in the expression 'that son.' The derivative adjective '*putravan*' possessed of male issue, applies to him, of whom, there are, one, two, or more sons.

and that accordingly, in one sense it means, united by blood, or a whole brother, and in the other, (that is, taken as an epithet, of the son of a different mother,) it signifies re-united, as a coparcener: *vide* COLEBROOKE's translation of the *Mitakshara* on inheritance—chap. 11. sect. 9. § 7. 9. and 10, and Notes subjoined.

37. *He does not bar, &c*] The author here further supports his position, (in § 36,) and also alluding to the prohibition, in the text below noticed, shews that MENU in his text (§ 29) intimates that an only son of one brother may be affiliated by another brother; for, by the singular number in the expression " that son" the case of one brother having a single son even, is indicated: the term '*putravan*' applying, as well to a person having one son only, as to him, who has more.

The derivative adjective ' putravan.'] This is designated in the original by the affix '*matup*,' by the subjunction of which to '*putra*,' the derivative noun, '*putravat*' in its crude state, of wich, '*putravan*' is the inflected nominative case. is formed. Thus the '*up*' of '*matup*,' is redundant: and by a special rule, the '*m*' becomes, '*v*,' where the last vowel of the root (as in this case) is the short *á*, or *á*.—In his illustration of this derivative, the author alludes to PA'NINI, 5. 2. 94; by which rule, it is used to supply a periphrasis, combining a nominative case, governing the verb 'to be,' and in construction, with a genitive or locative case. Thus, '*Goma'n*'—one, *of whom*, there are cows. '*Brikshava'n*'—woody: applied to a place, *in which*, there are trees.

* YA'JN'YAWALKYA, 2. 146.

The prohibition of the gift, in adoption of an only son, does not refer to the case proposed, the reason not applying.

38. And hence, from the sanction of the gift, of an only son even, in the present case, there is no room, for the application of the prohibition, ("Let no man give or accept an only son, &c.") For, since, as propounded in the sequel of this text, assigning the reason (" For he is[destined] to continue the line of his ancesters*,") the continuation, of the line of his ancestors (the father, and the rest,) is completed, by means of a son, although common to two brothers: it is established, that the prohibition in question, refers to persons other than brothers.

And besides, the application of the term gift, to the case in question, is figurative.

39. Besides, as gift, consists in the creation of another's property, after the previous extinction of one's own; and this is forbidden, by the text quoted;—and since, in the case proposed, there is no extinction of property, by making the son of one brother common to both; —the sense of the word gift, [as applied thereto,]like the gift of a daughter in marriage, is figurative.

The adopted son, however, of one brother, may not be affiliated by the rest.

40. Since the word *'putra,'* [in *'putraván,'* 'possessed of male issue'] in its sense of the real legitimate son, is primary, it is established, that, those designated by that term, are sons of that description only: and consequently it follows, that there is no adoption, [by other brothers,] of the substitute for the real son, made by a brother.

Adoption of another should not be omitted in the case of the death, or the hope of the birth, of a brother's son.

41. Since by the verb 'be' [in the present tense], the actual existence, of the condition of possessing male issue, is declared; [the author] excludes such co-edition, as past and future: and hence, the benefit, mentioned in such texts, as (" should the father see the face of a living son, &c.") does not accrue to one brother, by the means of the deceased son of another:—neither, in the expectation of an unborn son,[of a brother,] must the adoption of another, be omitted.

The force of the word 'all' used by MENU, shewn.

42. Since, the brothers only,destitute of male issue, would be designated by the pronoun, *'they;' 'all'* is added, with a view to obviate [any inference,] as to the want of relation, of the natural father, to his own son.

* VAS'ISHT'HA 15. 3.

43. As 'they' is a compound, formed by the retention of one term, and omission of others, being resolvable into the phrase " he and they *(dual and plural)* ;" at the desire of one, two, or more [brothers], for male issue, the affiliation of a brother's son, takes place.

Of 'they' also.

44. 'By means of that.' [By him even, by whom, the natural parent becomes the father of male issue, do all the brothers also become so.—'Son.'] From the use of the singular number, the relation as son of one even, to many, being declared; •the prohibition, contained in the text, " Let no man give or accept an only son," is not applicable here : as indeed, has been already declared. (§ 38.)

Import of other terms given.

45. And accordingly, in the *Kálik a-purana*, an indication of VETA'LA and BHAIRAVA, sons of SIVA, becoming both fathers of male issue, by means of the same son, is thus found : " the sages said : " There is no salvation for one des-" titute of male issue. This is recognized in the world and " *Vedas*. VETA'LA and B'HAIRAVA formely went to a moun-" tain to perform devotion. Previous to that, they were " unmarried, and sons of them, are not mentioned, [as hav-

Case in point of VETA'LA and B'HAIRAVA cited from the *Kálika-pura'na.*

45. *SIVA.*] Or the great deity is mentioned in this extract, under his names 'SANKARA,' or the benefactor, and 'HARA,' or the destroyer.

The sages said, &c. &c.] It is to be feared that, an instance here occurs, of literary fraud, too commonly practised among Hindu authors, and perhaps those of every nation, where the art of printing has not reduced works of authority, to an accurate and unvarying standard. On collating this pretended extract from the *Kálikapurána*, with a copy of the original, it proves to be artfully mangled and abricated. Indeed, were an extract authentically made from that work, it would tend to establish the converse of the position, in favour of which it is adduced. The following notes will explain these assertions :

And sons of them are not mentioned.] The translator has supplied from the *Kalika-purana*, what here follows between these marks [ ], with a view of rendering, the passage the more intellegible. This part has been apparently omited by the author, to favor the omissions below noticed.

Both in the next world and in this] Instead of '*pretyachéhacha*' thus rendered, in the copy of the original *Kalika-purana*, consulted by the translator, ' *nischitanchéti* ' occurs, meaning, ' and this is certain.' The circumstance of three copies of the author's work, concurring in the former reading, deterred the translator, from adopting the latter, which in point of sense, is unquestionably the preferable.

Attain heaven] A stanza of the original immediately following here has been purposely omitted : It is to this effect, " Oh, *Brahmanas*, the sages " VETALA and B'HAIRAVA had offspring born to them. Listen illustrious saints, while I declared their progeny."

Is easily attained] Here stanzas to the following effect, have been purpssely omitted ;—" One destitute of male issue, beholds " the hell named

" ing been born or not born. If sons were born, O excel-
" lent of the regenerate,] we much wish to hear, the parti-
" culars concerning them. MA'RKAN'D'EYA replied; 'Salva-
" tion is not for one destitute of male issue, both in the next
" world, and in this: O excellent saints, those, who are fathers
" of male issue, by means of their own sons, and those of
" brothers, attain heaven. Having in this world attained great
" perfection, when VETA'LA and B'HAIRAVA reached the
" abode of the great deity, they were happy on the hill
" *Kilasa*. Then, oh! twice-born men, NANDI* by the
" order of SIVA, as one consoling addressed them, in pri-
" vate, in the following true and instructive speech: he said,
"'Do you sons of S'IVA, destitute of male issue, exert
" yourselves in the production of a son. By one, to whom
" a son is born, every where salvation is easily attained.
" MA'RKAN'D'EYA continued;—Having heard these words
" of NANDI, they became elated in their hearts, and said,
" to him: 'We will make one [son] only.' Accordingly
" B'HAIRAVA, at some time, copulated with URVASI, a
" celestial nymph, and procreated on her a son, named
" SUVES'A. VETA'LA also, affiliated him as his son: and in
" consequence, by means of this son, both attained heaven-
" ly salvation.'"

Put,—None can escape from that, either by religious "austerities or "devotion: Liberation from it proceed from the production of a son only. "Therefore, beget ye sons on the bodies of divine females; your immora- 'lity has been produced, by drinking the milk of KA'TYA'YANI'†; there- "fore procreate immortal sons, on immortal beings: wherefore having in "any manner produced sons from the bodies of celestial beings, your welfare "will quickly follow."

We will make one [*son*] *only.*] The author, by the substitution of one letter for another, has ingeniously produced a sense directly opposite, to that of the *Kálika-purána*. The *Dattaka Mímánsa* reads *ekaméva*, 'one [son] only;' the original '*evameva*,' by which the sense would be, "we will do thus even."

Accordingly B'HAIRAVA *at some time, &c.*] What follows from this part, to the end of the alleged extract, appears to be a fabrication. It is cited indeed in the *Dattaka Chandriká*, as from the *Kálika-purána*: but is not found in that work. On the contrary, it is related with much prolixity, in the *Kálika-purána*, that B'HAIRAVA had a son SUVES'A, by URVASI: but it is not written, that such son, was adopted by his brother, who is mentioned as having raised distinct male issue to himself.

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* One of the celestial attendants of SIVA.
† A name of the goddess DURGA.

46. But, must not this relation of one, as son to many [brothers], be either produced at once, or in gradation? Not the first: for, there is no precept enjoining, that they should receive in adoption at once. Nor is the other supposition accurate: for a boy precluded by a previous initiation, another initiation of the same description, as the first, cannot be performed.

Dilemma suggested as an objection.

47. Should this be alleged, it is wrong: for, analogous to the case, exemplified in the passage ("seventeen are inferior and twenty-four superior sacrifices, &c.") the words 'they,' and 'all,' being the abridged form of the conjunctive compound: the association of the adopting brothers, is meant to be declared thereby: hence, the gift even [of a son] to several brothers associated, is valid. In the same manner, as at the religious gift, denominated '*tulápurusha,*' the united officiating priests, are the object, to whom it is made, and the receivers.

Refuted.

And the conclusion, that a nephew may be given, to several associated brothers, supported by the analogy, to the '*Tulápurusha*' gift.

48. VA'CHASPATI MISRA declares the same, thus: "since "the plural number is used in 'officiating priests' in this "passage, ('Having thus prayed to the gods, let him give "the officiating priests ornaments of gold,') the whole of "them conjointly even, are the object, to whom the gift is "made: and hence, after having placed, his spiritual precep-"tor's hand, above all, and arranged in order under it, those "of the officiating priests, who read the *Rig-veda*, &c. the "ornaments are to be given."

The analogy in this instance indicated by VA'CHASPATI MISRA.

49. Nor is even, the being son to many [brothers], at the same time, anomalous: for, analogous to DRAUPADI'S

There is no anomaly in the filial relation of one to

47. *Religious gift denominated* 'Tula'purusha.'] This gift (as its name denotes) is where for pious or auspicious purposes, the donor presents united *Brahmanas*, with his weight in some substance: some years ago RAJA RAJKISHN, publicly gave away in Calcutta, his weight in gold: instances of such pious, or rather ostentatious munificence, are of course rare: though this gift in barley, rice, salt, &c. is prevalent throughout the country.—It should be observed, that it must not be made to an individual *Brahmana*.

49. *Analogous to* DRAUPADI'S *being the wife, &c.*] DRAUPADI was the wife of, and received in marriage at the same time by, YUDHISTIRA, BHI'MA SE'NA, ARJUNA, NAKULA, and SAHADEVA, the five sons of PA'NDA, a king of *Indra Prast'ha (Delhi)*. The following particulars, relative to this circumstance, are mentioned in the *Máhab'harata:* DRAUPADA, the father of DRAUPADI, was the sovereign of the *Punjab* country. He had heard of the virtues

many; it is supported by analogy.

being the wife [of several brothers] by simultaneous acceptance, that relation of one, as son to many, though somewhat differing, is acknowledged; like the recognised state of the '*Dwyámushyáyana,*' or son of two fathers.

In § 29 MENU implies that there must be an act of the adopting brother, to establish the filiation of his brother's son, as his own.

50. Fathers of male issue, *(putrinah.)*] "Of whom, there is a son."—By the verb 'is' (signifying existence) in this phrase, (into which this derivative adjective resolves,) since existence is declared; and existence not applying to one, who has not been produced: an act of the adoptive fathers, is implied.

This is indicated by ATRI.

VAS'ISHT'HA.

51. And accordingly ATRI. "By a man, destitute of a "son only, must a substitute for the same be made, &c."—

of ARJUNA, and his unrivalled skill in archery: and secretly desired him for his son-in-law. To promote this object, he caused to be erected a pole, on which a wheel having a hole in it, and which constantly revolved, was horizontally placed. He also proclaimed a vow, that he would bestow his daughter, to the person, whoever might succeed, in discharging an arrow from underneath, through the hole of the revolving wheel, so dexterously, as on its descent, to fall through the same aperture. A particular day was appointed for the trial, and the invited princes of the vicinity, and persons of all degrees, assembled at the court of DRAUPADA. Previous to this, ARJUNA, and his brothers, had become ascetics. BHIMA appeared at the place of trial, with other religious mendicants; and when, no one in the assembly, would attempt so difficult an undertaking, by the advice of his companions, brought his brother ARJUNA, from their abode in the city. ARJUNA advanced to the trial, and accomplished the task imposed. DRAUPADA would have fulfilled his vow, but the princes and others, jealous of the success, of one apparently so mean, attempted with force to prevent his receiving the prize, his skill had won. ARJUNA, however, with the assistance of his brother, succeeded in carrying of DRAUPADI. Having arrived at their habitation, ARJUNA addressed his mother, who was reclined with her face covered, that "he had brought something." To this the mother (her face still covered) replied, by directing him, to divide it, whatever it was, equally with his brothers; and afterwards when aware of the object, to which her son alluded, would not retract her injunction.—In the meantime, with the advice of DRUPADA. his priest repaired to the abode of the brethren, and secrectly listening to their conversation, discovered, who they were: with this information, he returned to his master, who the next morning invited the whole family, to his palace, for the purpose of solemnizing the nuptials of his daughter, and ARJUNA. They attended with DRAUPADI.—The preparations were commenced, and when the king formally preferred his daughter in marriage to ARJUNA, he explained the nature of his mother's command: and that he would not espouse her, except in conjunction with his brothers. The king reluctantly consented, and DRAUPADI was received in marriage, at the same time, by the five brothers.

50. *This phrase into which this derivative adjective resolves.*] The '*Sanscrit*' reader will perceive, that a literal version, here, has not, and indeed could not well have been given. '*Putrinah,*' cited from MENU's text (§ 29) is the nominative case plural, of the derivative, formed by the affix, '*in.*' This is used in the same sense, as that formed by the affix '*matup.*' already noticed in § 37 and note subjoined, and is consequently illustrated by the same periphrasis which NANDA PUND'ITA, accordingly introduces. V. PA'NINI 5. 2. 115.

Vas'isht'ha also: "A person being about to adopt a son, "should take an unremote kinsman, or the near relation "of a kinsman, having convened his kindred, and announ- "ced his intention to the king, and having offered a burnt- "offering, with recitation of the holy words, in the middle "of his dwelling." Likewise S'aunaka: "Having advanced "before the giver, let him thus cause to be asked,' Give "'this son,' &c."

And S'aunaka

52. "Cause to be asked."] Here, by the casual form of the verb being used, it is meant :—' Let him ask, through a *Brahmana* employed for that purpose.'

A term used by whom is explained.

53. And consequently, the position that, the son of a brother, though unadopted, bears filial relation to his paternal uncle, on account of this text of Vrihat Para'sara, ("Let the nephew of a paternal uncle, destitute of male issue, "be his son: he only should perform his obsequies, of the "funeral repast, and oblations of food and of water,") is refuted. For, without an act of the adoptive parent, filiation, as his son, is not accomplished.

The contrary doctrine refuted.

54. It must not be argued, that in the cases of the son of hidden origin, aud the son self-given, there is no act of an agent, [as adopter;] because, in these passages,—("one secretly born in the house, is considered a son of hidden origin" —"Self-given, meaning, given by himself") no such act is mentioned. For, it is inferred, as otherwise, the consecution of an effect, to an act, would not be attained.

An act of the adoptive father, is implied in the cases of the sons of hidden origin and self-given.

55. Therefore, the text of Menu, and Vrihat Para'sara(§ 29 and § 53) are not pertinent, to the extent of their verbal import; for, thirteen descriptions of sons, would be the consequence.

Were Menu and Para'sara (§ 29 and § 53) literally construed; it would follow, there were thirteen sons.

56. Nor would thus, what was intended result: for the enumeration of twelve, in this text, would be contradicted: "Of the twelve sons of men, whom Menu, sprung from the 'self-existent, has named: six are kinsmen and heirs; six 'not heirs but kinsmen*."

Which would be at variance with the enumeration of twelve by Menu.

* Menu 9. 158.

Opponent's argument that such contradiction is no objection: as the enumeration of sons is variously specified by, a text of law.

57. But, may not this contradiction of number be admitted on account of the passages below cited. *Firstly*. A different text of law: "The legitimate son, the appointed "daughter, the son begotten, on an other's wife, the son of the "wife, the son of an appointed daughter, the son of a twice married woman, the damsel's son, the son received with a pregnant bride, the son of hidden origin, the son given, the "son purchased, the son self-given, the son made, the deserted son, and the one born on a woman of unknown caste,— "are the fifteen sons of a man." *Secondly*. A text of VRIHASPATI: "Of the thirteen sons, enumerated in their order, by "MENU, the legitimate son, and appointed daughter, are the "cause of lineage." *Thirdly*. A text (of MENU): "Sages declare these eleven sons, (the son of the wife, and the rest,) "as specified, to be substitutes for the real legitimate son, for "the obsequies would fail." And *lastly*, a text also of MENU, which declares: "The son of the body, and, the son "of the wife, may succeed to the paternal estate: but, the "ten other sons, can only succeed in order, to the family "duties, and to their share of the inheritance*."

VRIHASAPTI.

MENU.

MENU.

His argument refuted.

58. Should it be must argued, by an opponent, we reply, —True! It is established, that there is no contradiction of the number twelve: for, the several enumerations in each authority, are consistent; since in some, particular sons, are implied, and in others, expressed.

The gradation of the nephew as fifth in order of inheritance, would be contradicted.

59. And moreover, the assigning in the following text, the fifth place, in the order of succession, to the estate of one, who died without male issue, would be contradicted: "The wife, and the daughters, also: both parents, brothers "likewise, and their sons, &c†."

That is, if the brother's son, though unadopted were son to his uncle.

60 The exposition of this, is thus. If the brother's son, though unadopted, bear filial relation [to his uncle]; the enumerating the brother's son, on account of his wanting such relation, in the fifth place, in the order of succession to one dying without male issue, would be contradicted. The

* MENU 9. 165. † YA'JN'YAWALKYA 2. 136.

same also must be understood, in respect to the right in gradation, to perform the obsequies, as declared in this, and other texts. "The son, the son of a son, the son of a grandson: like "these, the offspring of a brother, or, that of a *sapin'd'a* also, "are born, oh king! capable of performing obsequies*."

A similar objection would apply to the order of performing obsequies.

61. But, is it not deducing a false conclusion, to argue a want of filial relation, from not performing the obsequies, and succeeding to the estate; for, the son of an unmarried daughter, aud the rest, notwithstanding their filiation, are shewn by VISHNU, in this text, to be incompetent to perform obsequies, or succeed to the estate. "Exceptionable sons, "as the son of an unmarried daughter, a son of concealed "origin, one received with a pregnant bride, and a son of a "twice-married woman, share neither the funeral oblation, "nor the estate†." So also, notwithstanding participation, in the obsequies and estate, may be wanting, the filial relation of a brother's son, though unadopted, may be admitted, without objection.

But VISHNU declares the incompetency of certain descriptions of sons, to perform obsequies or succeed to the estate, although filially related.

62. Should this be objected: it is erroneous. Participation, in the obsequies and estate, has been declared, to be the result of filial relation, in this passage ("Among these, "the next in order is heir, and presents the funeral obla- "tions, on failure of the preceding‡"): for, otherwise, like the impotent person and the rest, one, who merely bore the

Argument of opponent, founded on this circumstance, over-ruled by reference to texts of YA'JN'YAWALKYA.

62. *Amongst these, &c.*] The text of YA'JN'YAWALKYA, of which the initial part only, is here cited, is completed from the translation of the *Milácshara* on inheritance. (V. COLEBROOKE'S translation, Ch. 1. Sect. xi. § 21.) The passage quoted in the last paragraph, as from VISHNU, which is cited in § 27 of the Section noticed, is explained, as merely barring the right of the exceptionable sons in question, to a fourth share, legitimate issue existing: and as not affecting the text of YA'JN'YAWALKYA, here alluded to, by which any description of son whatever, on default of legitimate issue, may inherit the whole patrimony.

Impotent person and the rest] Meaning the outcast, and his issue, one lame and the others, who are excluded from inheritance.

An imperative mode of expression being used.] '*Vidhi-praytyaya,*' or an affix of injnnction, are the terms of the original thus rendered: by these, the injunctive future participle '*Kartavya*' *(must be adopted)* used by ATRI, is designated.

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* *Vishnu-purána.*

† This text is unauthentic. Vide note to COLEBROOKE'S translation of the *Mitakshara*, Chap. 1. Sec. xi. § 27.

‡ YA'JN'YAWALKYA.

semblance of being a son, would be of no use; and in this text, ("By a man, destitute of a son only, must the substi-"tute for the same, always be adopted, &c.") an imperative mode of expression, being used, the filial relation of one unadopted cannot exist.

And ATRI.

63. Nor must it be affirmed, that, the injunction in question, regards those, other than the brother's son: for, there is no proof of such partial application; and on the other hand, it would be at variance with the instance of the adoption, by VETA'LA, of the son of [his brother] B'HAIRAVA, contained in the portion [of the extract from the *Kálika-purána*, before quoted] commencing, "We will make one son only," and ending, "VETA'LA, also affiliated him, as his son."

Of whose text, it cannot be said, that it refers to one other than, a brother's son.

64. Moreover, in the case, where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow, that, the five brothers destitute of male issue, would have each fifty sons; and it would also result, that the fifty sons would severally have ten fathers: thus, there would be a great absurdity.

Besides if the filiation of a nephew, existed without adoption, whereof several brothers, some had sons, and others had not, an absurd consequence would result.

65. Nor, would an intended consequence thus result: for, in the passage, ("a substitute for a son, must be adopted,") unity, ascribed to the object to be adopted, is of definite import: aud the singular number, used in the following passage, to express severally, both the male issue, and the father of the same, would be contradicted. "If one, "among brothers of the whole blood, be possessed of male "issue, MENU pronounces that, they all are fathers of the "same, by means of that son."

Which cannot be intended.

66. Neither, must it be alleged, that, because the plurality of brother's sons, is mentioned in this passage, ("Those "who are fathers of male issue, by means of their own sons, "and those of brothers, are completely saved,*") many brother's sons, even though unadopted, may be sons of one per-

An argument to the contrary, can not be drawn from the mention in a passage noticed, of the 'sons of brothers' in the plural.

66. *Also the injunctive precept proposed.*] That enjoinig the necessity of adoption, as conveyed in ATRI'S text.

* From the extract from the *Kalika-purána* before cited, v. supra § 45.

son: for, from occurring in respectful modes of expression, in which by popular acceptation, the plural number is used, it has an indefinite import: also, the injunctive precept proposed, being accomplished in our opinion, by means of one only, the propounding many would be contrary to sense and law.

67. Hence, it is a settled point, that amongst near "*sapin'd'a*" kinsmen of the same general family, a brother's son only, must be affiliated: and therefore, by being adopted [the brother's son, and other kinsmen], are first in participating in the estate, and funeral oblations: but, not being adopted, they hold their respective places [in the order of heirs].

Conclusion, that of kinsmen, the nephew must be first adopted. These only inherit out of order from adoption.

68. The text too, of VISHNU, (§ 61,) refers to, where, any son prior in the order of enumeration, may exist. Thus there is no contradiction whatever.

The text of VISHNU reconciled, without contradiction.

69. But, this being the case, the filial relation of one unadopted, declared in the following text also, would not subsist. "If among all the wives of the same husband "one bring forth a male child, MENU has declared them all "by means of that child, to be mothers of male issue*." And this would not be an intented consequence; for it would be contrary to custom, and at variance with the appelation of mother, occasioned merely by being the wife of the father, as expressed in this passage.—" The wives " of the father, are all mothers."

Objection, that in the same manner, as in the case of the brother's son, the filial relation, of the unadopted son of a rival wife, to his step mother, as declared by MENU, would not exist.

70. Should this be objected, it is wrong: for, the son of a rival wife, originating immediately from portions of the husband, may though unadopted, bear the relation of son

Over-ruled.

70. *And the text* [*of* MENU,] *intends a restrication, &c. &c.*] The author's doctrine advanced in sec. 1, § 34, is, that, any one connected to the husband and wife, by containing portions of either, may of right be a substitute; and that the text of MENU, specifying substitutes, restrictive only, in respect to those not so connected: accordingly, he here introduces the same obscure sentence, intending that effect, with a view of anticipating any objection, as to the son of the rival wife, a subsidiary son, grounded on his not being enumerated by MENU.

* MENU 9 183.

[to another wife], and the text [of MENU] intends a restriction, [as to substitutes, not so circumstanced] as has already been declared*. But since the bother's son is not connected, by containing portions of either husband or wife even, he does not unadopted, bear filial relation.

The analogy declared by VRIHASPATI, between the cases of the brother's son, and that of the rival wife, consistently explained; so as not to affect the doctrine advanced.

71. " If there are several brothers, the sons of one "man, by the same mother: on a son being born to one " even of them, all of them are declared to be fathers of " male issue. The same rule is also ordained in respect to " many wives of the same person: if one brings forth a " son, he is the presenter of the funeral cake to the whole." As for the application by analogy of the rule regarding the brother's son, to that of the rival wife, declared by VRIHASPATI, in this text: that is propounded as meaning, [the son of the rival wife] to be a subsidiary son, not as intending his affiliation: for, his filial relation [to his step-mother] is established from his proceeding from portions of her husband. Also the being a substitute, being established, from proceeding partially from portions [of the pair]; the text [of MENU] intends a restriction, [as to substitutes,not so circumstanced,] as already has been declared.

DEVASWA'MI confirms.

72. Either portion [of the passage from VRIHASPATI,] has been made clear, by DEVASWAMI, in this text. " In " both, even, [it is meant that,] another substitute, must not " be adopted." And this text is thus interpreted in the *Chandrika*. " 'In both even'—in the two texts commencing, " (' If there are several brothers, the sons of one man, &c.') " [it is meant that,] the son of a brother, and that of a rival " wife, being any how capable of being substitutes, another " must not be adopted as a substitute."

The *Chandrika* where his text is explained cited.

VIJN'YA'NESWARA'S exposition of MENU'S text (§ 29.)

73. VIJN'YA'NESWARA also thus explains the text of MENU. (§. 29) " [This text] is intended to forbid the " adoption of others, if a brother's son can possibly be " adopted: it is not intented, to declare him son of his uncle

* Vide supra, sect. 1, § 34.

"for, that is inconsistent with the subsequent text, "'brothers likewise, and their sons, &c. &c*.'"

74. If no brother's son exist, an other even, being the nearest relative, according to the mode mentioned [must be adopted]. Conformably S'AUNAKA [continues†]. "Of *Kshatriyas*, in their own class positively: and [on default "of a *sapin'd'a* kinsman] even in the general family, following the same primitive spiritual guide, *(Guru)*: of "*Vais'yas*, from amongst those of the *Vais'ya* class (*Vais'-ya-játeshu)*; of *Sudras*, from amongst those of the "*Sudra* class. Of all, and the tribes likewise, [in their "own] classes only; and not otherwise. But a daughter's "son, and a sister's son are affiliated by *Sudras*. For the "three superior tribes, a sister's son is nowhere [mentioned "as] a son."

On default of the nephew, the nearest relative must be adopted; as intimated by S'AUNAKA.

75. "In their own class." In the *Kshatriya* tribe. Notwithstanding 'class' *(játi)*, being used in its general sense, propinquity as before, here likewise, constitutes a restrictive condition on account of the text of VA'SISHT'HA: "a person being about to adopt a son, should take an "unremote kinsman,&c."

Though 'class' is used by S'AUNAKA in the general, propinquity is a condition, by reason of the text of VAS'ISHT'HA.

76. On default of a *sapin'd'a* a kinsman, "and even in the general family, following the same primitive spiritual guide." Since there are no distinct and peculiar general families of the [primival] *Kshatriyas*: the primitive spiritual guide is mentioned, [to particularize the class, from which, the adoption is to be made.]

Import of the passage "and even in the general family &c." shewn.

76. *Since there are no distinct and peculiar general families of the* [*primival*] Kshatriyas.] The general families of *Kshatriyas* and *Vais'yas*, are distinguished by the primitive saint, or patriarch hereditarily acknowledged in the family. This is not the case with *Brahmanas*. The *gotra*, or general family of whom is determined by lineal descent, from some particular saint. *Sudras* again are all supposed to belong to the *gotra* of KA'S'YAPA, the common progenitor of the four tribes.

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* V. *Mitácshara* on Inheritance. COLEBROOKE'S translation, ch. 1, sect xi. § 36.

† This passage from S'AUNAKA, is the continuation of that cited in § 2.

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From which it appears, on defect of a '*sapin'd'a*,' one of the same general family, is ordained; to whom, the condition of equality of class, equally applies.

77. Accordingly, an account of his more remote connection, on failure of the "*sapin'd'a*" kinsman, one belonging to the same general family, is ordained. In respect to him also, the clause, "In their own class, &c." is likewise applicable; on account of the conclusion of the passage "of all, &c." And hence, a near or distant relation of a different class, is precluded [from being adopted.]

S'AUNAKA'S terms *Vais'yajáteshu*, explained.

78. *Vais'yajáteshu'*] this must be rendred,—from amongst those of the *Vais'ya* class,—as if, '*jatishu*' had been used: for '*jata*' ' or *jati*,' [of which the words are severally inflexions, are recited in the dictionary, as synonimes, signifying, ' class or sort.'

In respect to the *Vais'ya*, the condition of propinquity, and the clause, as to the general family following the same '*Guru*,' are equally applicable.

79. Here also, although the specification is general, propinquity as before, constitutes a restrictive rule. The clause too, (" and even in the general family, following the same primitive spiritual guide, ") is here likewise understood; on account of the text, commencing " [He specifies] the gene-"ral families of *Kshatriyas* and *Vais'yas*, as distinguished "by following the same primitive spiritual guide :" and be-"cause the passage, the initial words of which, are "who are adopted from those of his own general family, &c. &c.*" is common to the three tribes. It is equally the case in this instance also, that, on default of a '*sapin'd'a* kinsman one of the general family, following the same primitive spiritual-guide, [is to be adopted.]

78. *Vais'ya-jateshu.*] These terms occurring in the original, might also be rendered 'amongst those sprung from a *Vais'ya*: accordingly it is here the object of the author, to restrict them to their other construction, viz. 'In *Vais'ya* classes,' which he prefers. The *Sanscrit* reader will observe, that a literal translation has not, nor could not, well be attempted here.

79. *The text commencing, &c.*] Not having met with this text in its complete state, the translator offers with diffidence, the mode in which the initial words of the original are rendered. These occur in the *Mitácshara*, where they are cited under the name of ASWA-*La'yana*, the author of a work entitled the *Grihyasutra*. The same text is noticed in the *Dattaka Chundrika*, where the additional word '*probriniti*.' "He specifies" occurs.

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* VRIDD'HA GAUTAMA, vide supra § 4. in the original, those cited, are the initial words of the text.

80 ' From amongst those of the *Sudra* class.' Here also propinquity as before, [constitutes a restriction;] and the clause, (" and even in the general family following the same primitive spiritual guide,") does not here apply: since, [amongst *Sudras*] a general family, distinguished by following the same primitive spiritual guide, is not ordained. Therefore, it follows, that the *Sudra* class, in the general, [is the order from which the adoption is to be made].

Amongst *Sudras* propinquity is a condition, but the clause regarding the general family of the same *Guru*, does not apply.

Their tribe in general is the order from which the selection is to be made.

81. The same is declared, in the *Brahma-purana*. "In fact, for *Sudras*, gaining their livelihood by servitude, "living on another's bread, whose bodies depend on another, "there is not a son from any order whatever, [but their own "tribe] : because a slave only is produced, from a male slave, "and a female slave."

The same is intimated in the *Brahma-purána.*

82. On account of the superiority of those of the three first tribes, and of those born in their direct order; and of the inferiority of those born in the inverse order, a son cannot be adopted, from any order whatever, [by *Sudras*, but their own tribe]. A *Sudra* only, therefore, must be affiliated; for, a slave is produced from slave parents.

From which the import of the text cited is explained.

83. But, the three sentences regarding the '*Kshatriyas*' and the rest, (§ 74) should not have been propounded; because their import is obtained from the passage preceding (v § 2): and even if propounded, there is tautology in the part commencing " of all, &c."

Objection, that the passage commencing 'of *Kshatriyas*:' should not have been propounded.

84. This if objected, is wrong; because, by the terms '*Kshatriya*' and the rest, the inclusion of the *Mu'rd'hávasikta*, and other mixed classes, regulated by the same rules, as the *Kshatriya* and the rest, is meant: for, a text of S'ANK'HA expresses :—"one procreated,—on a female "*Kshatriya* by a *Brahmana*, is a *Kshatriya* even : on a " *Vaisya* woman, by a *Kshatriya*, is a *Vaisya* even: by a " *Vaisya*, on a female Sudra, is even a *Sudra*."

Refuted.

85. ' In their own class.' This is to shew, that though the same rules apply to the '*Mu'rd'hávasikta*,' and other

The phrase, 'in their own class' shews, that a

85. *On account of the indication of direct order in this text.*] The text of which the initial words only are cited, is the following of YA'JN'YAWALKYA.

Múrdhávasikta, or one of any mixed class, may not be adopted by one of the tribe with which he ranks.

mixed classes, as to the *Kshatriya* and the rest; still those do not become sons to a *Kshatriya*, and the rest, on account of the indication, of direct order, in this text. "Three "wives in the direct order of the tribes, &c. &c."

The sentence 'of all, &c.' is pertinent.

86. Nor, is there any tautology in this sentence, 'of all, &c.:' for, this part of the text: 'of all, &c.' by reciting. a resticion, as to their own classes, in respect to the tribes, and those born in the direct order of the same, is pertinent, in indicating that that does not apply to those born in the inverse order.

'Of all,' is used, to include those born in the direct order of the tribes, who would not otherwise be included by the term 'all.'

87. The expression 'of all' implies in fact this. From the cogency in the specification of the word 'tribes,' the restriction to their own class, would apply to the tribes only: not to those born in their direct order. To include these the word 'all' is used. Now, they are included, because they are regulated by the same rules, as the tribes. Nor is this term, an epithet of tribes; for the conjunction 'and' would be insignificant.

It is not an epithet of tribes.

Conclusion.

88. And, therefore, the restriction is,—'of the tribes, and those born in the direct order of the same, in [their own] classes only.' 'Not otherwise'—meaning, not amongst others, born in the inverse order of the tribes.

Objection that the part commencing 'of all' may possibly be an exception to the preceding part.

89. But why should not this part, [commencing 'of all, &c.'] be considered, as an exception to the rule, as to pro_ pinquity, inferred from the preceding passage [in § 2]? Should it be replied, because it would be repugnant to the

"Three wives in the direct order of the tribe, two and one, are, for a *Brahma-* " *na*, *Kshatriya*, and *Vaisya*, respectively. For one born a *Sudra*, a woman of his own tribe." The argument of the author, here used, requires illustration. A son begotten by a man of superior tribe, on a woman of inferior tribe, is of his mother's class, and technically called '*anupurvaja*' and '*anulomoja*:' that is,—one of a mixed class, born in the direct order of the tribes. Such issue is of several descriptions. For instance, the *Múrd'hávasikta*, or offspring of parents of the *Brahmana* and *Kshatriya* tribes. Though considered, however, as of his mother's tribe, such son may not be adopted by a *Kshatriya*. It is a maxim, that a man, must only affiliate, one of his own class, of whom he might have been the natural father. Now the *Múrd'ha'vasikta*, is born in the direct order of the tribes, being the issue of the union of a *Brahmana*, with a female *Kshatriya*; and not that of a *Kshatriya*, with a female *Brahmana*, which could not take place; as it would be in the inverse order of the tribes.

text of VAS'ISHT'HA ('a person being about to adopt, &c.'): the argument is wrong; for, the result deduced from that text is, that it is identical in its import, with the passage [in question,] regarding *Brahmanas*.

Refuted.

90. Such objection, if made, is inaccurate: for, were the passage in question, such exception: the rule, founded on ancient practice, which makes propinquity, as recognized, by popular acceptation, and in holy writ, a condition would be contradicted: no advantage would result: it would be repugnant to the context: and lastly were an exception, as to propinquity in the general, meant even, by this passage, the exception as to particular relationship, conveyed in this part of the text, ('But a daughter's son, and a sister's son, &c.') would be inconsistent. Therefore, the interpretation only, as given, is pertinent.

The daughter's son, and sister's son, are excepted, from the three first tribes by the part 'but a daughter's son, &c.'

91. This part of the text, ('but a daughter's son, &c.') propounds an exception, as to those of the three first tribes, with respect to the daughter's son, and sister's son, inferred from the mention of propinquity in the general.

This construction elucidated. It is supported too by the part subjoined as a reason.

92. Since, (the particle 'but,' having an exclusive import,) a restiction 'by *Sudras* only,' is conveyed; those of the three first tribes are excluded. On this point the author subjoins a reason: 'For the three superior tribes, &c. &c.'

onclusion.

93. Since the filial relation of a sister's son, to one of the three first tribes, is not exhibited, in any authority whatever; the passage is relative only to *Sudras*. This is the meaning of the whole.

'Sister's son's used, in the reason, indefinitely: otherwise, that term, or 'daughter's son,' in the preceding

94. The expression, 'a sister's son' is of indefinite import, in the [part subjoined as a] reason; for, [otherwise] it would follow, that it were therein an unmeaning term: or were it of definite import, one portion [of the

94. *It would follow, that it were therein an unmeaning term.*] Literally epithet; for, in the original of the passage of S'AUNAKA, alluded to, the single derivative word '*bha'gineyah*' (sister's son,) may be construed as an epithet

sentence would be unmeaning.

preceding sentence, viz. 'A daughter's son'] would be void of sense.

An argument used, to shew that the daughter's son and that of the sister, refer to *Sudras* only, indentical with that applied in a parallel case.

95. The daughter's son, and that of the sister, refer to the *Sudra* tribe: for, in no other authority, do they relate to those of the three first tribes; an argument, the same as that, used in the question, as to drinking spirits, and so forth. Hence, it is not accurate that these two refer to those of the three first tribes.

Objection that, by a literal construction, the sister's son, and not the daughter's, is excepted to the three tribes.

96. Next it may be alleged, that, both passages by being construed in a literal manner only, are demonstrative of their several subjects, but not so by being construed from inference. Consequently, it is the sister's son alone, that does not refer to the three tribes: not the daughter's son.

Overruled; as the text would be split, and an option of the daughter's son, accrue to those tribes.

97. This is also wrong: for a splitting of the text, would result; and an option, to those of the three first tribes, in respect to the daughter's son, follow: since by being an unremote kinsman, he would be inferred [as eligible,] and interdicted [as such,] by the restriction to *Sudras* only.

The same option otherwise deduced.

98. Or thus: by the restiction to *Sudras* only, a prohibition of the daughter's son, in respect to those of the three first tribes, would be established. And by the restriction, that, a sister's son only, may not be [adopted,] by those of the three first tribes, a sanction of the daughter's son, would be obtained. Thus, there would be an option.

If a literal mode of construction be adopted in the first passage, there must be a restriction, as to the object or agent, as here illustrated.

99. Besides, if [the two passages in question,] are to be construed, with reference merely, to their verbal import, in the first passage, there would be either a restriction [as to the object of adoption,] or one in respect to the agent (*parisank'hya.)* In what does the one, and in what the other consist? 'By *Sudras*, a daughter's son, and a sister's son only [may be adopted].' This is a restriction [as to the

of '*Sutah*' (son) there occurring. The idiom of the English language requires that these terms should be disjoined in the translation: that is, that '*Sutah*' should be construed by itself, as the predicate of the sentence.

95. *In the question as to drinking spirits, and so forth.*] The drinking spirits is declared lawful for *Sudras*. But not so by any authority, for those of the three first tribes. Therefore it is argued that these are meant to be excluded.

object; required,] because [otherwise,] the daughter's son, and the other, would be inferrible, from one portion [of the general text,]—and every relative commencing with the brother's son, from another. 'By *Sudras* only, a daughter's son, and a sister's son, [may be adopted.'] This is a restriction in respect to the agent; [which would be required,] as the daughter's son, and the other might be inferred [as eligible,] to the four tribes collectively.

If the first many objections would result.

100. If restriction, as to the object of adoption, be meant: then, there wonld be, a contravention of the whole law, ordaining the brother's son, and the rest, [as eligible for adoption:] the word 'class' in this passage, ('of all, and the tribes likewise in [their own] classes only: and not otherwise') as signifying the daughter's son, and the sister's son, would be contracted in its import: and it would follow, where no daughter's son, or sister's son existed, the affiliation of a son, could not take place.

So also.

If the second.

101. But, supposing a restriction, in respect to those, who may be the agents, meant; then, by the mere restriction, to *Sudras* only, the interdiction of the sons in question, to the three first tribes, being conclusively established, it would follow, that the passage, commencing, ('for the three superior tribes, &c.') as again prohibiting the same, were unmeaning.

Conclusion, that the mode of construction, of the two passages in question, must be, from inference only.

102. Therefore, by a construction deduced from inference only, is the interpretation of the two passages correct. And moreover, a verbal construction founded on revealed law, is more vexatious, than a construction deduced by the help of inference, and grounded on reasoning: and revealed

102. ***And moreover a verbal construction founded on revealed, law &c.***] The following is offered as an illustration of this part. If the two passages in question, (viz. those which conclude the text of S'AUNAKA) be construed verbally, they must be regarded as unconnected, and declaratory of distinct positions, which can only be considered true, by assuming them, to be founded on revealed law. And, as the passages are distinct, two revelations or passages of that law must be assumed. In construing, however, these passages liberally, by the help of inference, the author understands their import, to be thus: 'A daughter's son, and a sister's son, are adopted by *Sudras* only. For, in no authority, are such son mentioned, as eligible to the three first tribes; as 'they

law, being taken [as the basis of the construction,] two revelation must be assumed. Now ratiocination being the ground-work, this would not be the case. Therefore, the apparent reason presenting itself, is the demonstrative means.

Another reading of the first of these passages noticed: which equally admits of restriction being meant.

103. Although there is another reading,—' The daughter's son, and the sister's son, are declared to be sons of *Sudras** : still, [both] are indentical in their import, since the passage, commencing,—'For the three superior tribes, &c.'—is introduced, to manifest, that a restriction even, is intented, for obviating a doubt, whether, ' of *Sudras* only,'— or ' of *Sudras* also,' —were meant.

Which is thus intended.

104. Now, that a restriction is meant, thus [appears.] were there no restrication, in respect to the act of affiliation, the object of which, is the daughter's son, and sister's son, the whole four tribes might be inferred, as the agents therein. [But] from the consequent restriction to *Sudras*, it is established, that ' of *Sudras* only' is meant.

The term 'sister's son' is inclusive, of the daughter's son; otherwise objections would exist.

105. And accordingly, the term 'sister's son' is inclusive even, of the daughter's son also ; for, otherwise the restriction, that the daughter's son, and sister's son refer to *Sudras*, would not be attained : or if attained, an option as to the daughter's son, in respect to those of the three first tribes, would result, as has been already noticed.

A mode of reconciling the construction of the passages in question, from inference, without involving what is

106. If this is the case, then let the non-relation merely, of the sister's son, to those of the three first tribes, be proved by the daughter's son, and sister's son, referring to *Sudras* : should this be alleged, it would be wrong. For, as such position would be established, by this reason

are to *Sudras*.' Thus, without referring to revealed law, he understands the position in the first passage, demonstrated by an argument in the second : and this seems to be what he intends, when he says : ' Therefore the apparent reason, &c. &c,'

106. *If this is the case, then let, &c.*] In an enlarged state, the following appears to be the objection, which the author here anticipates. If the two last passages of S'AUNAKA's text, are to be construed only, from inference and reasoning : and if the restriction in respect to *Sudras*, would not be

* V. infra. Sect V. § 18.

alone,—'from referring to *Sudras*,'—the mentioning the daughter's son, and sister's son, would be unmeaning: and if a loose mode of expression must be assumed, the use of the term 'sister's son' only, without specific meaning, is less vexatious, than the use of both terms, in an indefinite import. Consequently, that only which has been propounded, is accurate.

objected in the last section, refuted.

107. SA'KALA has clearly laid down the above points: "Let one of a regenerate tribe destitute of male issue, on "that account, adopted as a son, the offspring of a *sapin'd'a* "relation particularly: or also next to him, one born in the "same general family: if such exist not, let him adopt one "born in another family: except a daughter's son, a sister's "son, and the son of the mother's sister."

A text of SA'KALA cited, as confirming the doctrine advanced.

108. By this it is clearly established, that the expression 'sister's son' [in the last sentence of S'AUNAKA's text § 74,] is illustrative of the daughter's son, and mother's sister's son, and this is proper: for, prohibited connection is common to all three. To enlarge, would be useless.

It appears from which, the term sister's son is illustrative of the mother's sister's son also.

attained, unless the term 'sister's son' were inclusive of 'daughter's son'; then, instead of the last of these passages, being considered, as containing the reason or argument demonstrative of the position declared in the first, let the first be regarded as the reason, establishing the position in the last: or, (in the words of the text,) 'let the non-relation, &c.' In this case, the passages in question, would be still interpreted from inference, and what is objected in the preceding paragraph, would not apply. The author anticipate, and refutes this mode of eluding, or retorting his arguments.

The mentioning the daughter's son, and sister's son.] In the first of the two last passages of S'AUNAKA's text, that is, in that which is here proposed to be assigned as a reason.

107. *One of a regenerate tribe.*] That is of any tribe other than the *Sudra*.

108. *For prohibited connection, &c.*] What is here meant is explained in Sect. iv. § 18.

SECTION III.

Rule, should one different by class be illegally adopted.

Should one different by class, be illegally adopted, what is to be done, is shewn by S'AUNAKA.

1. IT has been declared that, one different by class, must not be adopted: should this rule be transgressed; what would be the case? In reply to this question, S'AUNAKA says: "If one of a different class, should however, "in any instance, have been adopted as a son, he should "not make him the participator of a share. This is the "doctrine of S'AUNAKA."

Import of the expression 'different by class.'

2. The meaning is :—should one be adopted, according to form even, whose class is different,—being superior, or inferior, in respect to the adopter.

Force of the term 'share.'

3. Exclusion, from participation in the whole estate, is implied, from the cogency of the term 'share;' [which intends,] 'a share of the estate:' and on account of,—a text of KA'TYA'YAN, which expresses,—"But, if they "be of a different class, they are entitled to food and raiment "only,"—and a portion from YA'JN'YAWALKYA, commenc- "ing, amongst these, the next in order is heir, and presents "funeral oblations, &c." and ending "this law is propounded "by me, in regard to sons, equal by class."

SECTION IV.

The qualification of the person to be adopted.—The gift of a son, under what circumstances and by whom proper.—The son of a twice-married woman, and slave's son specially referred to.

S'AUNAKA intimates, the description of person, to be adopted.

1. NEXT, in reply to the question, as to the qualification of the person to be affiliated, S'AUNAKA declares: "By no "man, having an only son, *(eka-putra,)* is the gift of a "son, to be ever made. By a man having several sons, "*(bahu-putra,)* such gift, is to be made, on account of "difficulty, *(prayatnatas.)*"

His expression '*eka-putra*' explained.

2. He, who has one son only, is '*eka-putra,*' or one, having an only son: by such a one, the gift of that son, must not be made: for, a text of VAS'ISHT''HA declares, "an "only son, let no man give, &c."

By prohibiting the gift, of an only son, S'AUNAKA bars also, the receiving such, in adoption, as declared by, VAS'ISHT''HA.

3. Since, the word 'gift,' means the establishing another's property, after the previous extinction of one's own: and another's property, cannot be established, without his acceptance: the author (S'AUNAKA) implies this also, in his text in question. Therefore, a prohibition likewise against acceptance, is established, by that very text. Accordingly VAS'ISHT''HA: "an only son, let no man give, or accept, &c. &c."

Who assigns a reason, from which, it is argued, that, both the giver, and adopter of an only son, incur an offence.

4. To this he subjoins a reason, "For, he is [destined] "to continue the line of his ancesters." His being intended for lineage, being thus ordained: in the gift, of an only son, the offence of extinction of lineage, is implied. Now, this is incurred, by both the giver, and adopter also. For, the [reason in question,] is subjoined, after both [verbs: viz. 'give' and 'accept.']

2. '*Eka-putra,*' *or one having an only son.*] The compound, '*ekaputra*' is capable, of being variously rendered: The interpretation of the author, restricts it to the sense in which it is here used.

Other texts, which, prohibit the gift of a son, refer to the case, of an only son, not to where there are several.

5. As for another text of recorded law,—"In instruc-"tion, the father is absolute over a son and son's wives: "but not so with respect to the son, in sale and gift," and the text of the Holy Saint: "except a wife and a son, "other things may be given:"—these texts regard the case of an only son.

'Ever' used by S'AUNAKA, indicates even, during a calamity: as intimated by NA'RADA.

Whose text refers to an only son.

6. ['Ever'] in a time of calamity: accordingly, NA'RADA says: "A deposit, a son, and a wife, the whole estate of a "man, who has issue living; the sages have declared unalien-"able, even by a man, oppressed by grievous calamities: "although, the property be solely, that of the man him-"self." This text also, regards an only son; for, it is declaratory of the same import, as the texts of S'AUNAKA and VAS'ISHT'HA.

S'AUNAKA resolves a question, in declaring, that a son, is to be given, by 'one having several sons.'

7. Next, the author replies to the question,—By whom is a son to be given? 'By one having several sons.' He, who has several sons, is '*bahu-putra*,' or 'one having several sons.'

By which the gift of one of two sons, (which might otherwise be inferred) is prohibited: and this is supported by an extract from the *B'ha'rata.*

8. "By one man having an only son." From this prohibition, the gift, by one having two sons, being inferrible: this part of the text ("By one, having several sons, &c.") is subjoined, to prohibit the same, by one having two sons also. For, the speech of S'A'NTANU to B'HISHMA, expresses: "He who has only one son, is considered by me, as "one destitute of male issue, oh! decendant of KURU. "One, who has only one eye, is, as one destitute of both: "should his only eye be lost, he is absolutely blind."

The masculine gender, being used, a woman

9. "By a man having several sons." Since, the masculine gender is here used, the gift of a son, by a woman, is

7. *By whom is a son to be given?*] This is one of the topics specified in the commencement of the work.

9. *And* [*her*] *independence is not ordained.*] In rendering this passage from a variety of readings, which occur, and constructions, which might be adopted, those which appeared to agree best with the context, have been selected.—Two or three manuscripts referred to, concur in reading '*naira-peksh-a'sravana'ch-cha.*' This however, is not so easily rendered with general consistence, as the reading of the third manuscript, which has been adopted; viz. '*nairapeksh-a'sravana'ch-cha.*' To the former of these readings, the printed copy adds *iti-b'ha'va.* This confirms as proper, the construction of the sentence with what precedes, rather than what follows it; though thereby, an inaccuracy of style (by no means however to him uncommon)

prohibited. Accordingly, VAS'ISHT''HA says: "Let not a "woman either give or accept a son;"—and [her] independency, is not ordained.

must not give a son, as declared also by VAS'ISHT''HA.

10. With the husband's assent, a woman also is competent. Accordingly, VAS'ISHT''HA adds: "unless with the "assent of her husband."

She may with her husband's assent.

As authorized by VAS'ISHT''HA.

11. "Whom, his mother, or his father, gives *(dadyat)**" —"his mother or father give *(dadyatam)*†." As, for what is contained in these passages, as intimating the equality of the father and mother: that is merely, with reference to the assent of the husband.

Two passages 'seemingly implying, the equality of the wife, consistently explained.

12. It must not be argued, that, thus the gift of her son, by a widow, though during a season of calamity, could not take place, on account of the impossibility of the assent of her husband; analogous [to her incapacity] to adopt. For, by referring to the instance recorded of GA'LAVA, such gift may be inferred, as legal, and the singular number, indicating independence of another, is used.

In a season of calamity, the widow, though the assent of her husband, is impossible, may give her son: as confirmed by a case in point.

13. The husband, singly even and independent of his wife, is competent to give a son: for in the two passages cited (in § 11) the father, is mentioned singly, and unassociated with the mother, and there is this reason of BAUD'HA'YANA found: "From the predominance of the virile seed, "sons are regarded even, as not produced of the womb."

The husband may give his son, independent of the wife: argued from passages, cited in § 11. Of BAUD'HA'YANA.

must be imputed to the author. If, the first of the readings noticed, be preferred, the translation must be thus: "and [besides in the text of S'AUNAKA, in question, the man] is mentioned independently of, and without reference to, his wife."

12. *Instance recorded of* GA'LAVA.] The translator has not yet succeeded, in discovering the circumstances here alluded to; indeed the terms of the original, '*Gálaviya-linga*,' might equally be understood, as signifying an instance recorded by GA'LAVA. It should be observed, that the printed copy reads '*Mánaviya-linga*,' which may be rendered 'the text of MENU:' and if this reading be correct, that cited in § 11 and § 19, wherein the expression 'during distress' occurs, is alluded to. Three distinct copies referred to by the translator, concur in the reading adopted by him: for which reason he regards the other as a substitution, made by some *pandit*, to obviate the difficulty attendant on the reading adopted.

The singular number, indicating independence of another, is used.] In the passages quoted in § 11, 'mother' is mentioned in the singular number, and (as it were,) independant of the father.

* Part of a text of YA'JN'YAWALKYA ii. 152.
† Part of a text of MENU ix. 168.

The *B'hárata.*

In the *Bharata* also, [a reason is found.] "The mother, "is the fosterer: the son is of the father: he is [as it were] "that very person, by whom produced." A passage of revealed law, is likewise [confirmatory]. "His-self is truly "born a son."

And *Védas.*

Implied in the last of the passages, cited (in § 11) that, the power to give, of both united, is principal: as may be argued from passages of VAS'ISHT''HA, and BAUD'HA'YANA.

14. And, from the intimation of the agency of both together, by the verb 'give' in the dual in MENU's text, the competency of both united, is principal. Accordingly VAS'IST''HA says: "Man, produced from virile seed and ute-"rine blood, proceeds from his father and mother, as an "effect from its cause; therefore, his father and mother "have power to give, to sell, or to abandon their son." BAUD'HA'YANA also. "For, the connection to the father "and mother, is equal."

"The mother or father give." In this part of his text, (§ 11) MENU propounds three positions.

15. Conformably, in this passage, ("the mother or father give") MENU, intending,—from her dependance on the assent of her husband, the inferiority of the mother [as the agent, in the gift of a son] :—the mediocrity of the husband, on account of his independance of the wife;—and the pre-eminence of both united, from their being equally parents,—propounds each position in order last, according as he prefers it, to that preceding.

Objection refued.

16. It must not be argued, that, this is merely a single sentence, on account of the only verb being used, in the dual number: for, the disjunction in the middle, [by the particle, 'or'] would be inconsistent. Therefore, the passage in question, comprises three positions.

The text of YA'JN'YAWALKYA is confirmatory.

17. Accordingly, the chief of saints, in this passage, "whom his mother, or his father gives," has used the verb in the singular number even, though referring to each [nominative case.]

In S'AUNAKA's text (§ 2) 'on account of difficulty;' is assigned as the reason.

18. On the subject proposed, the author [S'AUNAKA] assigns a reason,—"on account of difficulty *(prayatnatas).*"

14. *Therefore his father and mother*, &c.] In the original, the compound of conjunction '*Mátápitarau*' occurs, indicating the association of the father and mother.

That time, in which there is great trouble, is [a time of] difficulty; that is,—a season of calamity.

19. Hence, the meaning is this;—a gift of a son, is to be made, in a time of calamity only: not otherwise. Thus KA'TYA'YANA says: "But during a season of distress, "the gift or sale even, may be made; otherwise, he must "not attempt the same. This is the injunction of the holy "institutes."* From the context,—"of sons and wives," is understood. MENU also. "Whom his mother or father "give during distress, confirming the gift with water."

Explanation of the term.

Conclusion, that the gift of a son, must be only made, during distress: as declared by KATYAYANA.

Whose text alludes, to sons and wives.

MENU also.

20. ["During distress."] In a famine, and so forth: should the gift be made, no distress existing, the giver commits a sin, on account of the prohibition, "otherwise "he must not attempt the same."

21. Or, the term '*prayatnatas*' may signify—'on account of difficulty of the adopter.' During distress; that is,—when destitute of male issue: on account of the text of ATRI, commencing,—"By a man destitute of a son only, must, a substitute for the same, always be adopted, &c.†:" and it is thus interpreted, even by APARA'RKA, and in the *Chandrika*‡. "'During distress'—that is,—the adopter having no son."

In the gift of a son, during no distress, a sin is incurred. Other construction of S'AUNAKA's term 'difficulty' noticed. Confirmed by, a passage of ATRI. And an interpretation by APARA'RKA, and the *Chandrika*.

22. Another special rule, is propounded, in the *Kalika-purána*. "Sons given, and the rest though sprung from "the seed of another, yet being duly initiated under his "own family name, become sons. O Lord of the earth, "a son, having been initiated under the family name of "his father, unto the ceremony of tonsure inclusive, does "not become the son of another man (*anyatas*). The "ceremony of tonsure and other rites (*Chudádya*) of

Another special rule in the *Káli-ka-purána*.

22. *Another special rule, is propounded, in the* Kálika-purána.] This passage from the *Ka'lika-pura'na* down to 'sacrifice for male issue,' is inserted in the following note, by Mr. COLEBROOKE, in his translation of the *Mita'kshara* on inheritance, Chap. 1. Sect. xi. § 13.—"RAGHUNANDANA in the

* Before cited with a variation in the reading: V. Sect i. § 8.
† V. supra Note to Sect. i. § 63.
‡ V. supra Sect. i. § 7.

"initiation, being indeed performed, under his own family "name, sons given, and the rest may be considered as "issue: else, they are termed slaves. After their fifth "year, O King, sons given, and the rest are not sons. "[But] having taken a boy five years old, the adopter "should first perform the sacrifice for male issue. But, "the son of a twice-married woman, immediately on being "born, he should duly take as a son. Having performed "positively (*vai*) for such, immediately on being born, "the burnt sacrifice for the son of a twice-married woman, "the man should complete every initiatory rite, the ce-"remony for a male born (*játakarma*) and the rest. The "burnt sacrifice for the son of a twice-married woman, "being completed, from these (*tatas*) a son of that descrip-"tion, is filially related."

Exposition of the import of the passage in the

23. The meaning is,—although sprung from the seed of another, sons given, and the rest, when 'duly initiated

" *Udvaha-tatwa*, has quoted a passage from the *Kalika-pura'na*, which with "the text of VAS'HIST''HA* constitutes the ground work of the law of adop-"tion, as received by his followers. They construe the passage, as an un-"qualified prohibition, of the adoption of a youth or child, whose age exceeds "five years, and especially one whose initiation, is advanced beyond the cere-"mony of tonsure. This is not admitted, as a rigid maxim by writers in "other schools of law; and the authenticity of the passage itself, is contested "by some, and particularly by the author of the *Vyavaha'ra-mayúc'ha*, who "observes truly, that it is wanting in many copies of the *Ka'lika-pura'na*; "others, allowing the text to be genuine, explain it, in a sense, more consonant "to the general practice, which permits the adoption of a relation, if not, of "a stranger, more advanced both in age and in progress of initiation. The "following version of the passage conforms with the interpretation of it, given "by NANDA PAN'D'ITA, in the *Dattaka-Mímánsa'*."

23 *The different rites, commencing with that for a male born.*] These are specified, in the following note of Mr. COLEBROOKE, in his translation of the Digest, on text 134, Chap. 111, Book 5: "By these eight ceremonies "I understand, 1st, *Ja'tacarma;* a ceremony ordained, on the birth of a "male, before the section of the navel string, and which consists in making "him taste clarified butter, out of a golden spoon. 2nd, *Na'macarana;* cere-"mony on giving a name, performed on the tenth day after birth; or on the "eleventh, twelfth, or even the hundred and first day. 3rd *Nisheramana;* "carrying the child out of the house to see the moon, on the third lunar day "of the thirdlight fortnight from his birth; or to see the sun in the third "or fourth month. 4th, *Annaprasana:* feeding the child with rice, in the "sixth or eight month, or when he has cut teeth. 5th, *Chud'a'carana;* "the ceremony of tonsure, performed in the second or third year after birth. "6th, *Upanayana;* investiture with the marks of the class, performed in "the eighth year from the conception of a *Brahmana;* but it may be antici-"pated in the fifth, or be delayed to the sixteenth year. 7th, *Sa'vitri;*

* VAS'ISHT''HA 15, 1, 7.—The same cited in this work in Sect. v. § 31.

under his own family name,' (that is, by the adopter, according to the form prescribed by his own code, under the family name of himself,) into the different rites, commencing with that for a male born, then become sons of the adoptive parent, not otherwise.

extract commencing, "sons given, and the rest."

24. VAS'ISHT''HA declares this,—"and a given son, even "sprung from one following a different branch of the "*Ve'das*, being initiated [by the adopter], under his own "family name, according to the form prescribed in his own "branch of the *Ve'das*, is a follower of the same branch."

Confirmed by VAS'ISHT''HA.

25. "The son given, and the rest." By the term "rest," here used, the son made, and the others, are included; on account of this part which preceded [in the *Kálika-purána.*] "The legitimate son, the son of "the wife, the son given, the son made, the son of con-"cealed birth, and the son rejected, take shares of the "heritage. The son of an unmarried girl, the son of "a pregnant bride, the son bought, the son by a twice-"married woman, the son self-given, and the slave's son; "these six are contemptible as sons: on failure of the first "in order respectively, let him invest the next with filial "rights. But let him not appoint to the empire, the son "of a twice-married woman, nor a son self-given, nor one "born of a female slave."

Import of the term 'rest,' shewn by reference to a preceding part in the *Kálikapurána.*

Which directs that on failure of each preceding, the son next in order, successively shall be invested with filial right.

Certain exceptions in the case of empire.

26. The non-appointment to empire, of the son of the twice-married woman, and the other two, which is directed

To which, those excepted, under

"ceremony of investiture hallowed by the *Ga'yatri*, which must not be de-"layed for a *Brahmana*, beyond the sixteenth year: it should be performed "in the fourth day after the first investiture. 8th, *Sa'mavartana*; ceremony "on the return of the student from his preceptor's house. The whole "number of ceremonies, called *Sansca'ra*, as expiating the sinful taint, "contracted in the mother's womb, and as effecting regeneration, in other "words, as perfecting the class of a twice-born man, are ten. To the eight "ceremonies now enumerated, must be therefore added the ceremony which "precedes conception. (*Garbh'a'd'ha'na)*, and marriage, which is the last of "these sacraments. Rituals contain other ceremonies, two of which are "mentioned in the text and in the preceding note, but these are not essen-"tial."—Allusion is made to the *punsavana* or ceremony to obtain male issue, performed at the expiration of the third months of pregnancy, and the *Simantonnayna* performed in the 4th, 6th, or 8th months of the first pregnancy. This rite consists in combining the wife's tresses, and need only be performed once.

no circumstances can succeed.

in the latter part of this quotation, holds, even on default of any other son, besides the legitimate son. For, this part of the passage, is subjoined as an exception to the preceding part, (" on failure of the first would be respectively, &c.") and their non-succession to the empire, should a legitimate son exist, was declared in this preceding passage.—"A " legitimate son existing, let not the king invest in the empire, " the wife's son, and the rest : [nor] cause to be completed " [through such sons] the solemnities for his forefathers."

Their non-succession was before generally declared in a part preceding.

Which is explained.

27. The meaning is,—A legitimate son existing, let him not invest with empire, the son of the wife, and the rest : ' [nor] cause to be completed,'—that is, nor cause to be performed [by such inferior sons,] the ' solemnities,' meaning the funeral repast and other rites, in honor of his forefathers.

Though the specification of the family name, is not directly made in the *Játakarma,* and other rites, it is in their component part, the *vridd'hi-sráddʼha.* But it is directly made, in tonsure and other rites.

28. [" Under the family name *(gotrena).*"] Although, it is not ordained, that the family name is immediately instrumental in the ceremony, for a male born, and others ; still since, in the *vridd'hi-sráddʼha,* a component essential of those ceremonies, use of the family name, is made ; it applies also, to what is principal, [viz. those ceremonies themselves.] But in the rites of tonsure and the rest, it is used directly ; for a text expresses : " The coronal locks " of the boy, must be made with the enunciation of his " patriarchal tribe."

Filial relation proceeds from initiatory rites: which are affirmatively, and negatively shewn, in

29. It is declared, that, filial relation proceeds from initiatory rites : these, [as applicable to different cases,] the author

28. *Still since, in the* vridd'hi-sráddʼha.] This is a ceremonial, performed on the occasion of every initiation, to secure prosperity to the individual.—It consists, in offering to the manes of three sets of three ancestors, oblations of rice, &c. &c.—The first set comprises, the mother, the paternal grand mother, and great-grand-mother.—The second, the father, paternal grand-father, and great-grand-father.—The third, the maternal grand-father, great-grand-father, and great-great-grand-father. If any of these should not be dead : the next nearest deceased ancestor, whose relation is analogous, is substituted.

29. *These the author propounds affirmatively and negatively.*] Difficulty occurs in explaining, and translating, the intent of the author, in this part, consistently with his elaborate and abstruse commentary. The following illustration is offered with diffidence. In the extract from the *Ka'lika-pura'na,* there is this passage, " A son having been initiated, under the family name

propounds affirmatively and negatively—" a son having been "initiated, under the family name of his father, &c. &c."

the extract, in § 22.

30. That son, who is initiated under the family name of his natural father, unto the ceremony of tonsure, that is in rites ending with that of tonsure, does not become the son of another man—' *anyatas*' must be rendered, in the sense of the regular genitive, '*anyasya*' ('of another.')

Exposition of the passage alluded to.

31. In respect to the passage in question, there is this reconciliation.—It must certainly be affirmed, that, what is there declared, that, one on whom the ceremony of tonsure is completed, becomes not the son of the adopter, refers to the state, as son not in common; otherwise by this part,—" Having taken a child of five years, &c." the propounding one even, whose ceremony of tonsure has been completed, to be son of the adopter, would be contradicted. That, this passage, necessarily regards a child, on whom the ceremony of tonsure has been performed, will be made clear (v. § 48.)

Apparent contradiction in the extract alluded to, reconciled.

32. Hence, if one who has been initiated, in the different rites down to tonsure, be adopted, he becomes son of two fathers: for he is initiated under both family names; and that, the effect of this, is his connection to both families, will be declared in the sequel*.

Conclusion, that if one initiated as far as tonsure be adopted, he is the son of two fathers.

33. Thus, the different initiatory ceremonies, from that for a male born, down to tonsure inclusive, are declared to be the cause of filiation, [in the case of the adoption of one wholly uninitiated.]

Deduction, that the *Ja ta-karma* and other rites down to tonsure inclusive, are the cause of filial relation.

34. *A'chud'am* ('unto the ceremony of tonsure') might have been used [by itself.] The subjunction of the term

The use of the word 'inclusive' subjoined to the

"of his father, unto the ceremony of tonsure inclusive, does not become the "son of another man." By this the author implies negatively, that rites "ending with tonsure, are the cause of filial relation to the adoptive father; and this has reference, to what the author regards, as the most preferable adoption, viz. that of a boy wholly uninitiated, and consequently recently born. "The ceremony of tonsure and other rites of "initiation, being indeed performed under his own family name, sons given, and the rest may be considered as issue."—By this sentence, the author declares affirmatively, that tonsure and the rites following, are the cause of filial relation, and this must be regarded, as applicable to the case, provided for in § 35,—viz. that, where a boy wholly uninitiated is not procurable.

* V. infra Sect vi. § 41 et. sequ.

terms 'unto tonsure.'

'inclusive' (*anta*) is for the sake of authorizing, the affiliation of one whose coronal locks have not been made according to the form of his patriarchal tribe. For, the principal rites, not being completed, he is capable of becoming a son, and the part, commencing—("The ceremony of tonsure and other rites of initiation, &c. &c.") is about to be explained.

The part, "the ceremony of tonsure, &c." is added with reference to the case, where one uninitiated in preceding rites, may not be procurable.

35. How is the case, should a boy, on whom the rites, commencing with that for a male born, have not been performed, not be procurable? Anticipating this question, the author adds—"the ceremony of tonsure and other rites "of initiation, &c."

Exposition of the part in question.

36. When indeed, the rites of initiation, commencing with that of tonsure, are performed under his own family name,—that is—under the family name of the adopter, (the particle '*vai*' (indeed) having an exclusive import:) then, only can sons given, and the rest be considered as issue, else they are termed slaves.

Import of the phrase '*chud'ádya*' restricted.

37. The complex phrase "*chud'ádya*" signifies those rites, of which tonsure is first; but not rites, antecedent to tonsure. For, with reference to what preceded, tautology would result.

Conclusion that one initiated in every rite preceding, tonsure may be adopted.

But, that, as an object of adoption, one wholly uninitiated is principal, and one initiated as far as tonsure exclusive, is secondary.

38. Therefore, even should the ceremonies, commencing with that after birth, and ending with that of '*annaprásana*,' or feeding with rice, have been performed under the family name, of the natural father, there is no repugnancy [in the adoption:] and thus it is established, that the child, on whom the ceremony for a male born and the rest, have not been performed, is principal [as the object of adoption;] and one, on whom the rite of tonsure has not been performed, [but the other previous rites have,] is secondary.

37. *The complex phrase* 'chud'ádya,' &c.] This compound term might admit of either interpretation.

Tautology would result.] The same position as that contained in the first sentence of the extract, would be declared. This has been explained by the author, as referring to the adoption of one wholly uninitiated and consequently just born. In which case, the whole initiatory rites preceding tonsure, are to be performed by the adopter.

39. [Sons given, and the rest]. By the term 'rest' are included, the son made, and the others, as has in fact been declared: they become sons by initiatory ceremonies also: not merely by adoption: for, that would defeat the opposite alternative subjoined, "else they are termed slaves."

By "The rest" the son made, and the other sons, are included, whose filial relation is from initiatory rites also.

40. ['Else']. The meaning is, should the ceremony of tonsure and the rest, not be performed [by the adopter], or should one be adopted, on whom the ceremony of tonsure and other rites have been performed; a servile state ensues, not that of a son.

Import of the word 'else' occurring in the passage alluded to.

41. Since, that filial state, is produced from ceremonies; in the same manner as the being a sacrificial post and so forth; it is established, that one uninitiated is to be adopted.

General conclusion, that one uninitiated should be adopted.

42. A limited period for adoption being necessary, the author adds "after their fifth years, &c."

A limited period necessary, and propounded to be the fifth year.

43. One, though uninitiated, is not to be adopted, after the fifth year: for, the time having gone by, he cannot become a son. By this it is declared, that the five [first] years only, are the season for adoption. Now, the propounding this position negatively, is for the purpose of shewing, that an age beyond five years, is not even a secondary season: for, otherwise by the rule, ("every season ulterior to the appropriate season, is pronounced secondary") it would follow, that any time, beyond the fifth year, were secondary.

After which one, though uninitiated, is not to be adopted.

Reason, why the position that the five first years are the season for adoption, is propounded negatively.

44. And therefore, as by this passage ("commencing "from birth, unto the third year, &c.") the third year, is the principal season for its performance: and since, year is mentioned in the conclusion ("after the fifth year, &c.") it follows, that in the extract in question, the word 'tonsure' is meant to signify the third year. For, otherwise the consequence would be, that, where the ceremony of tonsure took place at the same time, with the investiture of the

Term 'tonsure' in the extract § 22, intends the third year.

41. *Sacrificial post and so forth.*] The post and other implements, necessary for a sacrifice, are consecrated by the performance of ceremonies, and thus are qualified for the purpose.

characteristic cord, at his eighth year; one on whom the ceremony of tonsure had not been performed, might be adopted. Nor would, what was meant, thus result: for, it would be at variance with the part commencing "after the "fifth year, &c."

Conclusion, that as far as the third year, is the primary season, and beyond that till the fifth, the secondary.

45. Hence, it is established, that the term 'tonsure,' in the passage,—'unto tonsure inclusive'—intending also, the third year, [limits] the proper season: that, beyond the third year, to the fifth, is the secondary season: but that after that, no time is even secondary, [for the adoption of one initiated, in rites preceding tonsure, but not in that rite.]

Deduction from the phrase 'are not sons.'

46. 'Are not sons.'] By this, it is intimated, that, though filial relation be not produced, yet tonsure, and other rites of initiation may be completed; for, the time, for the performance of these respectively, yet exists: still, however, they are only slaves, for filial relation is wanting; and this is the third cause of a servile state.

A text of KA'TYA'YANA, and an interpretative passage of SARVAJNYA on MENU, from which the gift and adoption severally of one beyond the 5th year, an inferrible, explained, as referring to a child, of that age.

47. "Let not wives and sons, being unwilling, undergo "sale, nor even gift." As for the prohibition in this text, of KA'TYA'YANA, against the gift and so forth, of persons unwilling, that even, must be interpreted as forbidding, the gift of a boy of five years only: not of one older.—And:— "one discriminating, not a minor." As for, what is thus interpreted by SARVAJN'YA, adverting to this reading,— ("discriminating good and evil") in the text,—"whom a "man takes being alike, &c *:" that must be explained, thus

46. *And this is the third cause of a servile state.*] The other two causes are indicated in § 40

47. *As for the prohibition in this text,* &c.] From the text in question, the possibility of the gift of a son however old, is inferrible: the author accordingly. to reconcile it with the doctrine, that the adoption is not to take place, after the fifth year, interprets, (though unsatisfactorily,) that, the text regards the gift of a child of that age: there being no ground to presume, the the gift of one older.

As for what is thus interpreted, by SARVAJN'YA, &c.] The text alluded to, as interpreted, is one of MENU, describing the son made, or adopted—the expression, "discriminating good and evil." there occurring, is an epithet of the object of adoption. If this phrase, as the interpretation by SARVAJN'YA, might imply, signify, one passed the years of minority: the rule, excluding

* MENU 9, 169.

—'a boy of five years only, discriminating by the faculty 'of reason : but not a minor [generally].' The meaning is, "he should not take [any] one, coming within, this defini-"tion,"—'a minor *(b'ala)* is till the sixteenth year.'

Purpose and import of the passage 'having taken, &c.' in the extract § 22.

48. Then, if there be none uninitiated [unto tonsure inclusive], what is to be done? In reply to this, the author adds,—"having taken, &c." The meaning is,—having taken a boy five years old, initiated in rites ending with tonsure.

The passage, "the adopter should first perform a sacrifice for male issue," why subjoined.

49. But how can such be adopted, since he is declared to be a slave? Anticipating this objection, the author subjoins, —"The adopter should first perform the sacrifice for male "issue." The objection is thus reconciled.

A passage from *Védas* cited, by which such sacrifice is shewn to be productive of offspring.

50. "He, who is desirous of issue, should offer to fire, "parent of male offspring, an oblation of kneaded rice, roasted "on eight potsherds; and to INDRA, father of male issue, a "similar oblation of rice, roasted on eleven potsherds. Fire "grants him progeny; INDRA renders it old." In this passage [of the *V'edas*], sacrifice is declared, as a cause productive of offspring.

Deduction, that where one initiated be adopted, the effect of the sacrifice, besides filial relation, is the removal of the servile state.

51. Hence, in the case where the offspring is not born, its production, is the effect to be produced: but, where offspring already born, is adopted, it is implied, that, in that case, since the birth has taken place, the filial relation, is the effect to be produced: for otherwise, the precept proposed would not be accomplished. Now, this relation cannot subsist, without the removal of the servile state: therefore, the removal of that also, [by the sacrifice,] must of necessity, be admitted: otherwise, were [the sacrifice] productive of

from adoption, one of six years old, and upwards, would be contradicted: accordingly, the author restricts the passage of SARVAJN'YA, as intending, one of five years capable of discrimination, not any minor in the general sense of the term.

51. *The precept proposed.*] That is the one, enjoining the production of a son.

Those rites are inferred from the term 'first.'] By the use of the word 'first, in the passage; "The adopter should first perform the sacrifice, for male issue"—the performance of rites, subsequent thereto is implied, and initiatory rites are meant, as subsequently shewn.

filial relation only, it would take place in any mere adoption of a son; and if [it be argued, that,] there it is not required, since the filial relation is produced, from initiatory rites only; then, the same is the case, in the instance proposed: for, those rites are here inferred from the term 'first;' and it is declared in the sequel; "The man "should complete every initiatory rite, the ceremony for a "male born and the rest."

Whence it is concluded, that one though initiated may be adopted.

52. Therefore, since filial relation, preceded by the removal of the state of slave, which had been occasioned by previous initiation, is produced by a sacrifice for male issue; it is established, that one though initiated [unto tonsure inclusive,] may be adopted.

Objection obviated.

53. If this is the case, then the passage should only recite,—"Having taken one initiated [unto tonsure inclusive]." What occasion is there, to use the expression," a boy five years old?"—Should this be objected, it is erroneous; for, the passage intends this restriction—'a boy five years old 'only [i. e. under six]:' and the restriction, is for the sake of securing, an investiture of the characteristic thread, conducive to the holiness, resulting from the sudy of scripture, which is preceded by the previous acquisition of letters.

Further argument of opponent refuted.

54. And it must not be argued, that this restriction is established by the preceding sentence: for, this from its limiting the period, for [the adoption,] of one, whose initiation [as far as tonsure inclusive,] has not been performed, is received, as not intending the meaning in question.

Import of the term 'first.'

55. 'First,'—that is, previous to initiatory rites being performed.

Objection obviated.

56. But it is asked, why is it not meant,—"previous to "the sacrifice for adoption?" Because, the past participle

53. *For the sake of securing an investiture of the characteristic thread. &c.*] The *Védas*, or holy scripture must not be studied, till this ceremony has been completed; the fifth year, is the proper season, for learning the letters: therefore to secure an investiture of the characteristic thread, such as may be productive of holiness, resulting from the study of scripture, it is necessary that the adoption should be restricted to one of five years.

54. *The meaning in question.*] A boy five years old, or one, the sixth year from whose birth, has commenced.

" having taken" being used, an antecedent time for the act of adoption, including all its essentials, is inferred : and the previous initiatory rites, being annulled by the sacrifice for male issue, the performance of other rites, is absolutely necessary.

The passage; "But the son of "twice-married woman, &c." is subjoined as an exception.

57. " After their fifth year, sons given, and the rest are "not sons." In respect to this previous position, the author subjoins an exception ; " But the son of a twice-married "woman, &c."

Definition of the son of a twice-married woman.

58. " A child begotten on a woman, whose [first] mar-"riage had not been consummated, or on one, who had "been deflowered [before marriage], is called the son of a "twice-married woman*." By this definition, one born on a twice- married woman, of any of the seven descriptions, is included.

Explanation of 'immediately in being born.'

59. '[Immediately on being born'] that is, as soon as produced : hence the time of birth only, is meant, no other.

Import of the terms 'duly take.'

60. [Duly take,] that is adopt, according to the rules of adoption.

57. *The author subjoins an exception.*] By the first sentence (" after their fifth year, *&c.*") it is implied, that sons given, and the rest within their fifth year by adoption, acquire filial relation.—By the expression sons given, and the rest, the son of the twice-married woman, is included.—To except such description of son, from the operation of the rule mentioned, the author supposes the subsequent passage, (" But the son of a twice-married woman, &c.") to be subjoined.—By this, the adoption of such son, is restricted to the time of birth.

58. *A twice-married woman of any of the seven descriptions.*] These are specified in a text of NA'RADA, cited in the *Mita'kshara*, in the chapter on granting loans.—They are the following :—1, The re-married damsel, whose first marriage had not been consummated.—2, A woman who having been guilty of incontinence, is given in marriage to another husband, by relatives apprehensive of legal penalties.—3, One given in marriage by kinsmen to a *Sapin'd'a* relation of her first husband, no brothers of the same existing.—4, One who during her husband's life cohabits with another.—5, Such a one, who subsequently returns to her husband.—6, The widow who after her husband's death, avoiding his brothers and other kinsmen, from lust cohabits with another.—7, A woman forcibly taken, purchased, or induced by distress, who voluntarily prostitutes herself with another man.—It should be observed that the three first only in the strict sense of the term are '*punurb'hu*' or twice-married woman, the others being denominated '*swairini*' or self-guided. The whole, however, are classed under the general term '*Para-purva*,' meaning one who has had previous connection with another man.

* YA'JN'YAWALKYA.

Objection obviated.

61. But, for one just born, is not the ceremony for a male born, alone proper, on account of this rule,—" Before "others have touched the new born boy, &c." Therefore, how can it be said : " immediately on being born, he should " duly take as a son. ?" Excellent ! for then, one unadopted not having filial relation to the man himself, initiatory rites could not be performed : for, a text express,—" Let the " father initiate his own sons, &c."

Further argument of opponent refuted.

62. Neither can it be said, that paternal right proceeds alone, from the relation, as natural father ; for, this is denied, by this passage,—" the receptacle is more important than the seed* ;"—and a text of GAUTAMA recites, " of the other "by special agreement, &c." The meaning is [the child begotten, on one man's wife,] is the son of the other,—that is the procreator,—by special agreement only, &c.

Conclusion, that in the case in question, adoption first takes place.

63. Hence in the case, in question, adoption takes place, anterior to the performance of the ceremony for a male born.

The passage "having performed, &c." propounds a variation to a general rule.

64. The performance of the initiatory rites, being inferred, as following the adoption, the author propounds a variation in this respect ; " Having performed, &c." The meaning is this : After the adoption, having performed the burnt sacrifice, for the son of a twice-married woman, subsequently, let him perform the ceremony for a male born, and the other initiatory rites.

Objection of an opponent.

65. But, is not this impossible, since it is contrary to the argument, exemplified in the sacrifice [to fire] for a son born ? Accordingly, on the same principle, as this is

62. *By this passage the receptacle,* &c.] The close of a text from MENU, is here cited, which in its complete state, is thus : " Unless there be a special " agreement between the owners of the land and of the seed, the fruit belongs " clearly to the land-owner, for the receptacle is more important, than the " seed."—The text of MENU, as well as that of GAUTAMA, refer to,—where a husband being impotent, may appoint another, to raise up issue to him on his wife : in which case, unless with express agreement, the offspring bears not filial relation to the procreator.

65. *The argument exemplified in the sacrifice* [*to fire*] *for a son born.*] Allusion is here made, to the 18th Topick, 3d Section of the 4th Book of the *Mímánsà*, by JAIMINI : it is there proposed, as a subject or a disquistion, whether the sacrifice to fire, takes place immediately after birth, or when the ceremony for a child born, has been completed. The opponent argues, that

* MENU 9, 52.

ordained, so is the burnt sacrifice, for the son of a twice-married woman, directed in the case in question. [Now this according to your opinion] is performed, previous to the ceremony for a child born : therefore, since it is to be completed in five days, the principal rite [being the ceremony] in question, would be barred.

Refuted.

66. Should this be objected : it is replied, that, in the case in question, the burnt sacrifice for the son of the twice married woman, is not analogous to the sacrifice [to fire] for a son born, which is ordained in respect to spiritual purposes. Besides, [that used,] may be a mere unrestrictive order, of mentioning the former sacrifice, and the ceremony for a child born, and other rites for a son produced from the wife of another: in the same manner, as in this passage,—"Having performed the sacrifice prescribed for the day of the "new moon, and that of the full moon, let him offer an "oblation with the *So'ma* plant." Thus there is no repugnance.

It is not, a restrictive or absolute rule that the

67. The particle *vai* [positively,] having an exclusive import, the construction is,—"For one directly after birth

the consequent should immediately follow its cause, and therefore, the sacrifice to fire, occasioned by birth, should be consecutive thereto.—On the other hand, the supporter of the right opinion contends, that, as the giving the breast to the infant, is ordained, after the completion of the ceremony for a child born, if the sacrifice is to be performed, previous to this ceremony, from the great delay, which must necessarily occur, before the breast could be given the child, its death would be occasioned : and in that case, there would be no object, to whom the fruit of the sacrifice, consisting in purification, and so forth, would accrue. Therefore, the sacrifice in question, does not immediately follow birth, but takes place after the completion of the ceremony for a child born.

66. *In the same manner as in the passage, &c.*] In the 3rd Topick, 4th Section, 5th Book of the *Míma'nsa*, a disquisition is proposed, whether a restrictive order, is intended, or not, in the passage in question, for the performance of the ceremonials specified. The opponent alleges, that a restrictive order, is deducible from the past participle,—'having performed.'—This is denied, by the supporter of the right opinion, on the ground, that the sacrifice with the *Sóma* plant, is shewn, to be consecutive to the establishing a consecrated fire, in the passage,—"one about to offer an oblation, with the *Sóma* plant, should [first] establish a consecrated fire." It should be observed, that without having first established such fire, an individual cannot sacrifice after the forms prescribed, for the *Darsa* and *Paunarmása* sacrifices, or those on the days of the new and full moon.

67 *Therefore a restriction as to the priority, &c.*] Great obscurity pervades the whole of this part of the work. The translator conceives, that in this particular place the author has omitted to express the train of reasoning, by

burnt sacrifice is to be first completed.

"only, at no other time:"—therefore, a restriction as to the priority in time, or otherwise, of the sacrifice, for the son of the twice-married woman, is not deduced; as in the case, of the sacrifice [to fire] for a son born.

Purpose and import of the term 'every.'

68. By the term 'every' alone, the meaning being complete, the mention of the ceremony, for a male born, and the rest, is added to exclude anterior rites, whilst the offspring was in the womb.—As for the use of the expression 'all,' notwithstanding the mention of the ceremony for a son born and the rest: that is, for the purpose of suggesting, whatever initiatory rites may belong to any particular individual; and hence, it is to be inferred, that although for *Sudras,* there is no investiture of any characteristic cord, and so forth, still, they become sons even, by the ceremony of tonsure and other rites.

A person not of the three first tribes cannot perform the sacrifice.

69. "The man." Although a general expression is used, still, since one of the three first tribes only, is competent to perform, the burnt sacrifice, for the son of the twice-married woman; in respect to others, the filial relations proceeds from mere initiation alone.

Deduction of the author from the passage "being completed, &c."

70. The author thus concludes, that the burnt sacrifice, and initiatory rites united, are the cause of filiation; "Being completed, &c. &c."

Passage explained.

71. The meaning is: the burnt sacrifice for the son of the twice-married woman, being completed, 'from these,' that

which he arrives to the conclusion advanced. In the extract from the *Kàlika-puràna,* it is first stated, that a person should regularly adopt the son of a twice-married woman, immediately after birth. The following sentence adds, "having performed positively, (*vai*) for such, immediately on being "born, the burnt sacrifice for the son of a twice-married woman, the man "should complete every initiatory rite, the ceremony for a male born, and the "rest."—This, the author construes, as implying pointedly, the performance of the sacrifice directly after birth. But the preceding sentence directs that adoption should then take place. From the contrast of the two injunctions, the author argues, that no positive and restrictive rule, as to the priority in time, or otherwise, for the performance of the sacrifice for the son of a twice-married woman, can be deduced.

As in the case, of the sacrifice [*to fire*] *for a son born.*] On a reference to the note subjoined to § 66, it will be perceived, that the sacrifice here alluded to, is restricted, to be subsequent to the ceremony for a child born.

is,—from these initiatory rites—a son of the twice-married woman, becomes filially related.

72. Under the same head, the author of the *Ka'lika-pura'na* propounds a rule, applicable to the son of the twice-married woman. " He should perform, at the funeral repast " of his father, a rite dedicated to a single ancestor *(ekodish-* " *ta)* ; not any *pa'rvana*, or double rite, and so forth."

Rule in respect to the son of the twice-married woman, declared in another passage of the *Kálika-purána*.

73. The son of a twice-married woman, at the funeral repast of his father, on the anniversary of the day of death, should perform rites, dedicated to a single ancestor, not any *p'arvana*, or double rites, and so forth.

Passage explained.

74. By the terms, " and so forth," the different variations of the *p'arvana* rites, are likewise prohibited. For, a text of JA'TUKARANA expresses,—" Annually, let the

Import of its term; 'and so forth.'

72. *A rite dedicated to a single ancestor* (ekodishta), *not any* pa'rvana *or double rite, &c.*] The first sixteen funeral repasts, taking place after the ten days, immediately succeeding the day of death, as well as that on the anniversary of such day, are *ekodishta*. On these occasions, the following articles are first presented, in honour of the deceased ;—raw rice, liquid butter, honey, barley, soaked peas, fruit, water, frankincense, white flowers, *kus'a* grass, a lamp, sandal wood, betel, cloth, a thread, and water for the feet. The oblation of the funeral cake, then takes place.—The *pàrvana* or double rite, consists in the same oblations, and other ceremonials, being consecrated, on the death of the father, and other sire, in honour of the ancestors, on the mother' side, as well as in that of those, on the father's side. Thus, besides, the articles above enumerated, a funeral cake is offered. to each of the three nearest deceased male ancestors, on the father's side, and mother's side. The oblations in honour of the ancestors on either side, being preceded by a *Viswadeva* offering—The term *Viswadeva*, denotes a certain set of divinities collectively, and the offering so called, is in their honour, and consists of the different articles, above enumerated : these should also be presented both on the occasion of a *pàrvana* and *ekodishta* rite, to the lord of the soil.—Rites in the form of *pàrvana*, are celebrated by a rigid Hindoo, on the following occasions ; on the last day of every moon *(amavàsya)*—on the 8th and 9th days of the dark fortnights of *Púsa*, *Màg'ha*, *P'hàlguna*, and *Aswina*, when oblation are made in honour of the mother, and two nearest deceased female ancestors in the line of the father,—on the full moon of *Màg'ha*,—during the whole of the first fortnight of *Aswina*, which is denominated '*Pitri-paksha*' as peculiarly set apart for the performance of rites in the honour of ancestors : and particularly on the 13th of this month,—on any day of *Agráhyana*, previous to using the rice of the new crop,—in *Vaisàk'ha*, on occasion of the grain which then ripens,—in *Ashàrd'ha* for the rains : when the sun enters the constellation *Ardra*—on occasion of eclipses, and visiting places of pilgrimage.

74. *The different variations of the* párvana *rite.*] Such as the daily funeral repast, consisting in oblations of rice *&c.* to be performed in honour of either set of the three ancestors, on the side of both parents respectively,

"son of the wife, and legitimate son, perform [obsequies] "according to the *p'arvana* form : the other ten sons "should perform a rite, dedicated to a single ancestor :" —and, a text of PARASARA, recites; "[A funeral re- "past] by the legitimate son, for a father, who has departed "this life, on all occasions, is in honour of three an- "cestors : that, by those of a different general family, is "consecrated to a single ancestor, on the anniversary of the "day of death'.'

JA'TUKARANA.

PARA'SARA.

The slave's son, described in a passage, of the *Kálika-pura'na.*

75. On the subject of sons, it had been said*,—"The son "self given, and the slave's son *(D'asa-putra).*" Of these he describes the latter : "A female purchased by price, who "is enjoyed, is a slave : it is thus declared. The son who "is born on her, is considered a slave-son.''

Explanation.

76. That female, though of equal class, being purchased by price, who is, 'enjoyed,'—cohabited with,—is denominated by former sages, a slave. For, a text, expresses,—"That "woman, who is bought by price, is not considered a wife : "she neither [avails] in rites, in honour of the gods, nor in "rites, in honour of the manes. The sages regard her as a "female slave." One born on her, is a slave's son. The son of a female slave, is 'a slave's son *(D'asa-putra),*' the feminine of '*D'asa*' (slave) being like the masculine in the *V'edas.*

Other interpretation of the compound term, *Da'sa-putra.*

77. Or, the compounds *D'asa-putra,* may be explained,— 'one who is both a slave and a son,' or, thus—'a son denominated a slave.'

and a portoin of the ceremony of '*sapin'd'ikarana.*' The first of these, differs from the real *pàrvana* rite, in as much as no *pind'a* or *Viswadeva* oblation is offered. In the second, the same ceremonials are observed, but the objects in whose honour they are performed, are different (vide Note to § 35 of Sect. 6.)

* Vide supra § 25.

78. The author lays down the rules, regarding this son,— "[such a son] must not participate in the dominion of a "king: nor of *Brahmanas* perform the funeral repast: he is "the lowest of all sons: hence, let him reject him."

Rules regarding such son, laid down in another passage.

79. The meaning is,—since, he is lowest of all sons, he must not share in the dominion of a king, nor perform the funeral repast of *Brahmanas*.

Explanation.

SECTION V.

The mode of adoption—Form by whom propounded—Necessity of observance—Effect of omission.

The mode of adoption.

1. THE qualification of the person to be adopted, has been defined. The mode is now propounded.

Declared by S'AUNAKA.

2. On this subject, S'AUNAKA has said: "I, S'AUNAKA, "now declare the best adoption: one having no male issue, "or one whose male issue has died, having fasted for a "son,—"

Illustration of parts of the text.

3. 'Adoption'—the form of adoption.—Having fasted on the day preceding, that of adoption—VRIDD'HA GAUTAMA has, "The impotent man, or also, one, whose offspring "has died."

Continuation of S'AUNAKA's text.

4. "Having given two pieces of cloth: a pair of ear-"rings, a turban, a ring for the fore-finger, to a priest re-"ligiously disposed, a follower of VISHNU, and thoroughly "read in the *Ve'das ;* having venerated the king and virtuous "*Brahmanas,* by a '*mad'hu-parka*' (or prepared food, "consisting of honey, liquid, butter, and curds) ;—"

'King' there occurring means, the owner of the village.

5. 'The king' here signifies, the chief of the village, for a text of VRIDD'HA GAUTAMA, recites,—"having in-"vited all kinsmen, and the chief of the village also."

A similar term in another passage, has the same meaning.

6. As for also the term, 'Lord of the soil (*Prithi'vi'-s'ále)*' in a subsequent passage of the same author even,—"After this, let him give a *mad'hu-parka* to the lord of "the soil :"—that intends only the owner of the village: for, this, being expressed in what preceded, is the more forcibly suggested.

Exposition.

7. The meaning is,—having venerated three *Brahmanas,* by a *mad'hu-parka,* and so forth, for the purpose of asking [for the child to be adopted.]

8. " Both a bunch of sixty-four stems, entirely of the " *kusa* grass, and fuel of the *palásá* tree also : having col- " lected these articles, having earnestly invited kinsmen and " relations ;—"

S'AUNAKA continued.

9. 'Kinsmen' *(bandhun)*—his own, his father's and mother's kinsmen. 'Relations' *(jn'yátin)—sapin'd'as.* The invitation of kinsmen, and the others, is for the sake of their witnessing : in the same manner, as the invitation of the king : for, both terms are confirmatory of this, in the sense,—'They unite with *(badhnanti),'*—and 'know *(jananti*), as their own, the adopted person.

Exposition.

10. " Having entertained the kinsmen with food : and especially " *Brahmanas* ;"—The meaning of this is,— having entertained invited kinsmen and *Brahmanas,* previously appointed, and (on account of the conjunction 'and' in § 8) invited relations.

S'AUNAKA continued.
Interpretation.

11. " Having performed the rites, commencing with " that of placing the consecrated fire, and ending with that " of purifying the liquid butter. Having advanced before " the giver, let him cause to be asked thus,—' give the " boy.' "

S'AUNAKA continued.

12. The meaning is,—let him cause a demand, to be made through *Brahmanas,* previously appointed.

Explanation.

13. " The giver, being capable of the gift, [should " give] to him, with the recitation of the five prayers, the " initial words, of the first of which, are,—*ye-yaj* " *n'yena,*&c."

S'AUNAKA continued.

9. *For, both terms are confirmatory of this, &c.*] Both terms, viz. *Ban-* '*dhun*' (kinsmen) and '*jñyátin*' (relations). '*Bandhu*' and *jñyáti*,' of which ' these terms are severally the accusative case plural, are derivatives of the roots '*bad'ha*' (bind), and '*jñya*' (know).

13. *With the recitation of the five prayers.*] The translator has not yet been able to learn the particular five prayers, alluded to.

And commented on.

14. The capacity to give, consists in having a plurality of sons, and the assent of the wife, and so forth.—'Should give,' is understood before this part,—"with the recitation "of the five prayers;" for, gift is indicated in the prayer, commencing—"Let him receive a male from an intelligent "person."

S'AUNAKA continued.

15. "Having taken him by both hands, with the re-"citation of the prayer, commencing,—'*devasyatwa, &c.*;' "having inaudibly repeated the mystical invocation '*Angad-"angat, &c.**;" having kissed the "forehead of the child: "having adorned with clothes, and so forth, the boy, bearing " the reflection of a son :—"

Comment.

16. ['The reflection of a son.' The resemblance of a son,—and that is, the capability to have sprung from [the adopter] himself, through an appointment [to raise issue on another's wife], and so forth; as [is the case] of the son, of a brother, a near or distant kinsman, and so forth. Nor, is such appointment of one unconnected impossible; for, the invitation of such [to raise issue] may take place under this text: "For the sake of seed, let some "*Brahmana* be invited by wealth, &c."

Deduction, that a brother, uncle, &c. who could not have been begotten by the adopter, are not to be adopted.

17. Accordingly, the brother, paternal and maternal uncles, the daughter's son, and that of the sister, are excluded: for, they bear not resemblance to a son.

14. *And the assent of the wife.*] The reading '*pati*' (the husband) is found in some copies: but that of '*patni*' (the wife) appears to be the more prevalent, and on that account adopted in the translation. The author does not mean that the gift of a son, without the assent of the wife, would be invalid, but with reference to his doctrine, in Sect. IV. § 15 that, such assent is essential to render the gift preferable.

16. *Through an appointment [to raise issue on another's wife, and so forth.]* By such an appointment, or marrriage, and the like.

As [is the case] of the son of a brother, &c. &c.] Such son, might have been begotten by the adopter himself, had he been appointed by the husband of the boy's mother, on account of his own impotence, to raise up issue on his wife; or, if the adopter himself, had married, the mother of the boy.

* V. infra § 7. Sect. VII. where this passage from the *Vèdas*, is cited at large.

18. Intending this very position, it is declared in the sequel, by the same author:—"The daughter's son, and "the sister's son, are declared to be sons of *Sudras*. For the "three superior tribes, a sister's son, is no where [men-"tioned as] a son*." Here even, the term 'sister's son' is illustrative of the whole not resembling a son, for prohibited connection is common to them all. Now, prohibited connection is the unfitness, [of the son proposed to be adopted,] to have been begotten by the individual himself, through appointment [to raise issue on the wife of another.]

To which position, a subsequent passage of the same author has reference.

Where, the term 'sister's son' includes all not resembling a son, on account of prohibited connection.

19. "The mutual relation between a couple, being ana-"logous to the one, being the father or mother of the other, "connection is forbidden: as for instance,—the daughter "of the wife's sister, and the sister of the paternal uncle's "wife."—The meaning of the text is this. Where, the relation of the couple, that is of the bride and bridegroom, bears analogy to that of father or mother: if the bridegroom be, as it were, father of the bride, or the bride stand in the light of mother, to the bridegroom, such a marriage is a prohibited connection. The two examples illustrate these cases in their order†.

As explained.

Passage of the *Grihya-parisishta*, describing prohibited connection in the case of marriage, noticed and explained.

20. In the same manner as in the above text, of the *Grihya-parisishta*, on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, [one, who, if begotten by the adopter, would have been the son of] a prohibited connection, must be excepted; in other words, such person is to be adopted, as with the mother of whom, the adopter might have carnal knowledge.

Conclusion, that, one with whose mother the adopter could not have legally married, must not be adopted.

20. *In the case in question.*] That of adoption.

* V. Supra, 2. 74.

† The translator has here omitted an explanation in the original, by other terms, of the words used in the quotation, to express the daughter of the wife's sister, and the sister of the paternal uncle's wife. The translation in English would be a ludicrous tautology.

S'AUNAKA continued from § 15.

21. "Accompanied with dancing, songs and benedic-"tory words, having seated him in the middle of the house: "having according to ordinance, offered a burnt-offering of "milk and curds, (to each incantation,) with recitation of "the mystical invocation,—'*Yastwa-hrida*:' the portion "of the *Rik-ve'da*, commencing,—'*tubhyam-agne*:' and " the five prayers, of which the initial words of the first, are "*Somo-'dadat*, &c."

Explanation.

22. The meaning is,—with such seven incantations, having offered seven burnt-offerings of milk and curds.

Rule propounded by VRIDD'HA GAUTAMA.

23. VRIDD'HA GAUTAMA, propounds a special rule: "Let him then, cause to be offered, as burnt-offerings, "an hundred oblations of milk with liquid butter, contem-"plating in his mind, as the object, the lord of created "beings, with recitation of the prayer '*prajapate-na-*"*twa-detam*, &c.'"

Stanzas following, the part of S'AUNAKA in § 15, have been before cited and explained.

24. The stanzas, which follow the passage, [of S'AUNAKA last quoted,] commencing,—"The adoption of a son, by a "*Brahmana*, &c.*" and ending with,—"such gift is to be "made, on account of difficulty†,—" have been before explained.

S'AUNAKA continued.

25. Next in order, to these stanzas, is this passage,—"Let the best of the regenerate to the extent of his ability "bestow a gratuity on the officiating priest."

Comment.

26. "The best of the regenerate"] A *Brahmana*.

Text.

27. "A king, half even of his dominion: next in order, a *Vaisya*, three hundred pieces."

Comment.

28. 'Half even of his dominion.'] The produce for one year, of half his dominion; for a text of VRIDD'HA GAUTAMA recites,—"Let him proffer the profits, arising from half his "dominion, received in one year." And, this is with respect to one of the royal tribe.—['Pieces'] Three hundred stampt

* Sect. 11, § 2. et seq. † Sect. IV. § 1, 8, 18, 19, 20, and 21.

coins *(nánaka,)* and this must be understood, to mean of gold, silver, or copper, with reference to the state of the individual, being superior, middling, or inferior, respectively: on account of the text of VRIDD'HA GAUTAMA,— "Let him proffer three hundred pieces in gold, or in silver, "or in copper, according as his condition may be superior, "or otherwise."

Text.

29. "A *Sudra,* the whole even of his property: if in- "digent, to the extent of his means."

Comment.

30. "The whole of his property."] That is, the amount earned by the labour of one year: for, the expression,— 'Received in one year*,'—is not special; and there is this prohibition, "if offspring exist, the whole of the property, "must not be given."

Mode of adoption propounded by VAS'ISHT'HA.

31. VAS'IHT'HA propounds another mode. "Man pro- "duced from virile seed and uterine blood, proceeds from his "father and his mother, as an effect from its cause. There- "fore, his father and mother have power to give, to sell, or "to abandon, their son. But let no man give or accept, an "only son: for, he is [destined] to continue the line of his "ancestors. Let not a woman give or accept a son, unless "with the assent of her husband. A person being about "to adopt a son, should take an unremote kinsmen, or the "near relation of a kinsmen, having convened his kindred "and announced his intention to the king, and having offer- "ed a burnt-offering, with recitation of the prayers deno- "minated '*Vya'hriti*' in the middle of his dwelling. But, "if a doubt arise, let him set apart like a *Sudra,* one "whose kindred are remote. For, it is declared [in the "*Ve'das*] 'Many are saved by one.' When a son has "been adopted, if a legitimate son, be afterwards born, the "given son, shares a fourth part."

* Occurring in the passage of VRIDD'HA GAUTAMA, cited in § 28.

First part of this text has been before explained.

32. Of this, the part commencing from,—"Man produced "from virile seed and uterine blood, &c." and ending,— "unless with the assent of her husband,—" has been before explained.

'Kindred' and other terms explained.

33. 'Kindred.'] The kindred of himself, his father and mother—'The king.'] The chief of the village.—'Dwelling.'] His house.

Import of the phrase 'with recitation of the prayers, &c.'

34. 'With recitation of the prayers,' &c.] On conclusion of the '*ájya-bhága*' sacraments, having offered with fire, four oblations with recitation of the prayers, denominated "*Vyáhriti*" severally, and collectively. Such is the meaning.

Term 'unremote kinsman' befor explained.

35. 'An unremote kinsman'] This has been explained.*

But if 'a doubt arise, &c.' explained.

36. 'But if doubt arise,' &c.] He, whose kinsmen are in a distant country, is one whose kindred are remote, being widely different by country and language: should such a person be adopted, a doubt even exists, with respect to his race, disposition, and so forth; this being the case, let him set him apart like a *Sudra*, : until the ascertainment [of doubtful particulars] let him not hold communion with him; this is the meaning.

Explanation of the passage, 'It is declared, &c.' which is subjoined as a reason.

37. On this point the author subjoins a passage of revealed law, as a reason. "It is declared, &c." through one son, 'many,'—the father and other ancestors,—are to be saved. On this account, the adoption of a son, takes place: not that, through one, many may be condemned: now, a doubt existing, on one side, condemnation is possible: therefore, he should not hold communion with him: for, an offence, though eventual, must be avoided.

Different reading and construction in the *Kalpataru*, noticed.

38. But, tbe author of the *Kalpataru*, adverting to the reading,—"*asannikrishtam-eva*"—says: "'one even whose

35. *The prayers denominated* 'Vyàhriti,' &c.] These are three prayers in the *Védas*. distinguished, by pre-eminence, by this term: and when recited consecutively, they are denominated *Mahà Vyàhriti*, or great *Vyàhriti*. This term, in its original sense, signifies enunciation.

38. *But the author of the* Kalpataru, &c.] A variety of readings and interpretations of the passage of VAS'ISHT,HA, here referred to, occur. The

* V. supra sect. 2. § 16.

"kinsmen are not at hand, *(asannikrishtam-eva)*'—even "one whose good or bad qualities are not known. The "particle '*eva*' is in the sense of,—even or though. 'But "if doubt arise;'—on account of his kinsmen, not being "near, should a doubt, with respect to his class arise; "considering him as a *Sudra*, let him set him aside, desti-"tute even of initiation—A *Sudra* even, is indeed a son, "this is the implied import."

And shewn to be inaccurate.

39. Either of these expositions, of the implied meaning, is inaccurate: for, the adoption of one of a different class, is forbidden. Therefore, the passage in its obvious sense, only is correct.

The part 'when, &c.' implies a special rule.

40. After the adoption of a son given, should a real legitimate son be born, the author (VAS'ISHT'HA) propounds a special provision with respect to the division of the heritage; —"when, &c." The meaning is: this son given, being adopted, if a real legitimate son be born, then the son given, receives a quarter-share: not an entire share.

It is a topic for consideration, to what sons the form prescribed, for adoption applies.

41. It is to be considered, whether this form [for adoption] in question, is to be applied, [generally] to the son bought, and the rest, or its application be determined by the distinction in the part, which preceded;—"to give, sell, "or abandon their son."

passage as read by NANDA, is thus: '*adura-bandhavam-bandhu-sannikrishtam-eva pratigrihniyat*:' which is rendered, should take an unremote kinsmen, or the near relation of a kinsman—The variation of reading, in the *Kalpataru* noticed, is the substitution of '*asannikrishtam*' for '*bandhu-sannikrishtam*;' and the passage is accordingly differently explained in that work: the variety in the reading and interpretation of this passage, is fully noticed by Mr COLEBROOKE, in a note subjoined to chap. 1. sect XI. § 13, of his translation of the *Mitàcshara* on Inheritance.

41. *It is to be considered, &c.*] It is subsequently determined, that the form is applicable to the sons made, and self-given, as well as the three sons, indicated by the terms,—"to give, sell, or abandon," viz. the sons given, bought, and deserted. (V. infra § 49, 50, and 51.)

The Taittiri *portion of the* Ve'das.] This is included in the *Yajur Véda*, and takes its name from '*tittiri*' a partridge—'The text of this *Véda* being "disgorged by YA'JNYAWALKYA, in a tangible form, and picked up by the "rest of VAISAMPA'YANA's disciples, who for the purpose assumed the shape "of partridges—" (WILSON in his Dictionary on the word—*taittiriya.*)

BAUDHA'YANA propounds a particular rule in respect to those following the *Taittiri* portion of the *Védas.*

42. BAUDHA'YANA, propounds a particular rule, for those following the *Taittiri* portion of the *Ve'das;*—"We are "about to explain the mode, for the adoption of a son"— (here follows the same, as in the quotation from VAS'ISHT'HA, from "Man produced, &c." down to, "unless with the assent "of her husband.") "One about to adopt, produce two "pieces of cloth, a pair of ear-rings, a ring, and a priest, "thoroughly read in the *Ve'das*, a bunch of sixty-four stems "of the *kusa* grass, and fuel of the '*purna*' tree.* Then "having invited kinsmen, into the middle of the dwelling, and "having made a representation to the king; having sat down "by the direction of a *Brahmana,*† in the assembly, or in "the middle of his house: having caused to be exclaimed, "Auspicious day! benediction! prosperity!: having perform-"ed rites, commencing with the recitation of the prayer "'*Yaddevāyojana,*' down to the placing the vessels for water: "having advanced before the giver, let him thus beg, 'Give "me this son.' The other replies, 'I give.' He receives "the child [and says], 'I receive thee, for the sake of reli-"gious duty. I adopt thee, for offspring.' Then having "adorned him, with the cloths, the ear-rings and ring: "having performed the investiture, and other ceremonials, "down to the kindling, a flame of fire: having dressed the "oblations, he offers a burnt-offering. After having recited "the incantation in the first chapter of the [*Yajur*] *Ve'da,* "commencing '*(Yas-twā-hridākīrināmanyamāna)*' with re-"citation of the sacrificial prayer '*Yasmai-twan-sukrite-"jāta-vede,* &c.' he offers a burnt-offering—Next, having "performed the burnt sacraments, where the prayers deno-"minated '*vyāhriti*' are recited: [and] that designated "*swisht'a-krit*'‡ with other ceremonials, being completed "down to the bestowing an excellent cow, he presents the

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* Butea frondosa.

† The reading in copies of the original gives "having presented *Brahmanas* "with prepared food;" but this appearing erroneous and inconsistent with practice, the translator has adopted the reading in the *Dattaka Chandrika.*

‡ This sacrament is so called from the prayer, read on the occasion.

" fee, [saying, 'Yours are] these two cloths, the ear-rings, and " the ring likewise.' But subsequently, if a real legitimate son " is born, he [the adopted son] succeeds to a fourth share; " so says BAUDHA'YANA."

43. As for the text of VRIDD'HA GAUTAMA, " A given " son, abounding in good qualities *(yat'ha-játe)* existing: " should a legitimate son, be born at any time: let both be " equal sharers of the father's whole estate." That must be construed, as supposing the former possessed of good qualities, and the legitimate son, destitute of the same: on account of the epithet '*yat'ha-játa*' ('abounding in good qualities.') He, in whom there is a '*játa*,' that is an assemblage *(samuha)* of good qualities, (implied by '*yat'ha*') is '*yat'ha-játa*,'—one abounding in good qualities. This is the meaning; for, the term '*yat'ha*' is significant of similitude, depending on quality.

A text of VRIDD'HA GAUTAMA, intimating an equal partition between the adopted and legitimate sons, refers to where, the first possesses, and the latter is destitute of good qualities.

44. Accordingly, by this text, (" of the man, to whom " a son has been given, adorned with every virtue, he even, " shall take the heritage, though duly brought from a different family,) MENU hath declared on defect of the real legitimate son, the succession [of the son given,] to the whole heritage. Therefore, his participation of a moiety, a legitimate son [not possessing good qualities] existing, is even proper.

This construction, supported by a text of MENU.

Conclusion as to its accuracy.

45. The same author, propounds a special rule, should the due form for adoption, not be observed: " he, who " adopts a son, without observing the rules ordained, should " make him a participator of the rites of marriage: not a " sharer of the wealth."

The same author provides against an informal adoption.

46. The meaning is; the marriage only, of one adopted, without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for, without observance of form, his filial relation is not produced.

Expostion of his text.

The necessity of observance of form, to constitute the filial relation of the adopted, declared by VRIDD'HA GAUTAMA.

47. Accordingly VRIDE'HA GAUTAMA. "The sons "given, purchased, and the rest, who are adopted from those "of his own general family, by observance of form acquire the "state of lineage [to the adopter ;] but the relation of *sapin'-* "*d'a*, is not included." Here, there is this restrictive rule : 'by observance of form only, acquire the state of lineage ;' for, the forms for gift, and so forth, from being comprehended in the descriptions of the son given and the rest, [are necessary to] complete the peculiar nature of each. For instance, [in MENU's description of the son given,] it is said : "give as a son in a time of distress, confirming the gift with water ;" here the mention of water, is illustrative of the whole form, necessary for the gift [of a son]; and hence, the form for adoption also, is implied : for, a text of MENU, expresses,—"Though duly brought from a different family." The meaning is 'obtained legally,—according to form.'

What three sons are denoted by the word 'rest' used by VRIDD'HA GAUTAMA.

48. "Purchased and the rest." By the word 'rest' the sons made, deserted, and self-given, are included. For, by the expression "as specified" in the text subjoined, it is declared by MENU, that those only, who are qualified by the form, indicated in their respective descriptions, are substitutes for sons. "The sages declare these eleven sons, (the son of the "wife, and the rest) as specified, to be substitutes for the real "legitimate son ; for, the obsequies would fail." Accordingly in the description of the son made,—"whom being equal in "class, a man affiliates *(pra-kuryát)*, &c."—by the preposition '*pra*' [which has a perfective import],—in the description of

48. *By the word 'rest' the sons made*, &c.] The reasoning of the author, in restricting the word 'rest' occuring in VRIDD'HA GAUTAMA's text as denoting only the sons made, deserted, and self-given, is not obvious. It should be observed, that, this text refers to sons, who may be adopted by an overt act of reception, from amongst those of the same family, whose filial relation is declared to be produced by the observance of form only, (of course the form applicable to such adoption ;) and whose relation, as *sapin'd'a* (meaning here by blood) is barred. The author restricts the sons alluded to in this text, whom the terms 'the rest' denote to the three mentioned, by referring to MENU, who declares that, the sons only, as previously described by him, are substitutes for the real son ; or in other words, possessing filial relation. But of the descriptions which preceded, in those only of the sons made, deserted, and self-given, (besides, the son given and bought,) is adoption, by an overt act of rception, and with the observance of the form proper

the son deserted "whom a man receives *(pari-grihniyát,)* as his own son, &c."—by the preposition '*pari*' [implying thoroughly],—and in the description of the son self-given,—"who offers *(sparsayet)* himself, &c."—by the verb 'offer' synonimous with 'give,' reception in adoption *(parigraha)* with the observance of form, is declared.

The form propounded by VA'SISHT'HA is applicable to the five sons, in question.

49. Intending the same, after having premised,—"there-"fore his father and mother have power to give, sell or aban-"don, their son," by VA'SISHT'HA also, is the form for adoption declared. "A person being about to adopt a son, &c." Now, from the expression 'adopt' *(parigraha)*, this form, is to be applied to the adoption likewise of the sons made, a self-given: for the same is implied by MENU, by each preposition respectively [in their several descriptions.]

Conclusion, that their filial relation is produced, by the observance of a form only.

50. Therefore, the filial relation of these five sons proceeds from adoption only, with observance of the form of either VA'SISHT'HA; or S'AUNAKA; not otherwise.

In the same manner, as in the case of the son of the wife, as declared by MENU. YA'JN'YAWALKYA.

51. As, has been determined, in the case of the son of the wife, by MENU, and YA'JN'YAWALKYA: for, [the necessity of] observing form, is declared affirmatively and negatively, in these and other texts—"Even the son, of a wife duly "authorized, not begotten according to law, is unworthy of "the paternal state. For, he was procreated by an outcast*."

for the same, indicated. Thus, in the descriptions of the sons made and deserted, the species of adoption, in question, with the observance of the proper form, is implied by the verbs '*pra-kuryát*' and '*pari-grihniyát*,' meaning literally, 'completely makes' and 'thoroughly receives.' The son self-given, is described as one who 'offers *(sparsayet)* himself, &c.' and the author explains this verb as synonymous with,—to give: but the gift cannot be completed without an overt act of reception on the adopter's part, perfected by the observance of the proper form. The same may be observed, in the case of the sons given and bought. On the other hand, the other six sons cannot be referred to in VRIDD'HA GAUTAMA's text, as in their descriptions by MENU, adoption with an overt act of reception, and observance of form for such adoption, is not implied; and besides these are connected by blood, as containing portions of either of the adoptive father, or his wife, and those who on that account were before declared, to be adoptive sons of right (V. sect. 1. § 34 and 35.)

49. *Now from the expression* '*adopt*' (parigraha)] Literally, completely receiving.

* MENU 9. 146.

"Either brother appointed for this purpose, who deviates "from the strict rule, and acts from carnal desire, shall be degraded, &c.*"

An inference to the contrary, which might be drawn, from a passage of the *Subod'hini*, inadmissible.

52. As for what is declared in the *Subod'hini*, a commentary on the *Mita'kshara*,—" And the elders regard "that property as temporal; like the filial relation, and so "forth:" that must be rejected, as contradicted; since it is repugnant to authorities, cited: and because, from the adoption only of a holy saint *(a'rsha)*, (that is,—one propounded by a holy saint) the relation as son, is declared, to proceed by PAIT''HINASI, in this text; " Now, these sons "given, purchased, and made, and the son of the appointed "daughter, who are in this case affiliated through the "adoption of a holy saint, by another, are not sons of "two fathers, [being] unconnected to those of the family, " *(asangata-kuli'n'a'dwya'mushya'yana'.)*"

Being at variance with authorities cited; and a text of PAIT''HINASI.

Explanation of the text.

53. Such, to whom those of the family, (that is, the family of the natural father,) are not connected, [are *asangata-kuli'na*; and] persons not sons of two fathers, and the same, [are *asangata-kulin'adwyámushyáyaná*] The meaning is,—those who are adopted, according to the form of a holy saint, are not allied to those of the family of the natural father: therefore, they are not sons of two fathers.

Another reading noticed, as admissible.

54. Or the reading '*Dwyámushyáyaná*' (sons of two fathers) may be admitted. For, it will be declared in the

53. *Persons sons of two fathers, and the same.*] The author analyses PAIT''HINASI's phrase '*asangata-kulin'àdwyàmushyàyanà.*' He begins by explaining the first member of this complex expression '*asangata-kulinà*' which is itself a compound, and then indicates the class of compound to which, the whole is to be referred. Thus, the sentence 'persons sons of two fathers, &c.' shews that the complex phrase in question is a *karmadhàru samàsá*, or compound of nouns, designating the same person; and not a *dwandwa samásá*, or conjunct compound of nouns, indicating distinct persons, but haviug a common government.

54. *Or the readiny ,&c.*] The variation in the reading noticed consists in '*Dwyámushyáyana*' being read without the privative a, instead of, with it, as in that preferred by NANDA. If that now noticed, be adopted, *sangata-kul'na* (connected, &c.) must be construed, as contained in the text instead of

* YA'JN'YAWALKYA.

sequel*, that where, both the natural and adoptive fathers, perform the different ceremonies, the state, as son of two fathers, ensues.

Passages of MED'HA'TIT'HI, indicate that filial relation only proceeds from the observance of ceremonies.

55. "Although it may be used like the word *Indra*, and "so forth; still, since the prevailing sense proceeds from "popular recognition, and the production [of a son] is "ordained in holy writ, the general acceptation of 'son,' like "the general acceptation of 'wife' and the like, must be "understood." By the purport of this, and other passages, MED'HA'TIT'HI also declares, the filial relation in adopted sons, to be occasioned only, by the proper ceremonies.

General conclusion.

56. It is therefore established, that the filial relation of adopted sons, is occasioned only, by the [proper] ceremonies. Of gift, acceptance, a burnt sacrifice, and so forth, should either be wanting, the filial relation even fails.

asangata-kulíná (unconnected,&c.) For, by the rules of orthography, whether 'té' (which occurs in PAIT'HINASIS' text) be followed by *sangata* or *asangata*, in coalition, the same form '*te-sangata*' is exhibited, though it is usual to insert a diacritical mark, equivalent to our apostrophe, to denote the presence of the vowel *a*.

55. *Like the word* Indra, *and so forth.*] The word *Indra*, is figuratively used, to express a person of great wealth: the word son, may in the same manner be used, in a figurative sense.

* V. infra Sect. 6 § 11.

SECTION VI.

Rule for succession, where the real son and one formally adopted; and where one formally, and one informally adopted, may co-exist—Relation in respect to family and so forth, of the absolutely adopted son—of the Dwyámushyáyaná*—who is described.*

S'AUNAKA provides for the cases, where a real son, and an adopted son, and one formally, and one informally adopted, may co-exist.

1. NEXT should the real legitimate son, and son given, and son adopted, without observance of form be co-existent; the same author propounds, the succession to the estate. "Him, "existing,—a son, being created: and a son given, exist- "ing,—one being adopted, informally: that estate is his "only, who is justly master of the father's wealth."

Interpretation of the part of his text providing for the first case.

2. "Him,"—the real legitimate son, existing; whatever son is created by adoption, and so forth; of these, to him only, who is master of the father's wealth 'justly,' that is—by obvious inherent right,—does that estate belong: not to another. The meaning is, that, if a real legitimate son exist, the adopted son, is not a sharer of the wealth: for, in the affiliation of a son, the non-existence, even of real legitimate issue, is an essential condition.

Of that providing for the second case.

3. Thus, a son-given, that is, one adopted according to form, existing, should a son be made without observance of law: of these likewise, the son-given, only is participant of the estate, not the one adopted without observance of law. Such is the meaning: for, ordained form alone produces the filial relation.

A son, adopted previous to the birth of a real son,

4. Should a son-given, and the real legitimate son exist together, the son-given, does not receive the share of an

elder brother. This, the same author propounds,—"Sub-"sequent to the adoption of a son-given, other sons, being "born,—should the father divide his estate; let him not be "the partaker of the share of an elder brother."

has no right of primogeniture, as shewn by another text of S'AUNAKA.

5. The meaning is this,—after the adoption of a son-given, a legitimate son, also being born: the son-given, does not receive the share of an elder brother.

Text explained.

6. MENU, next propounds another rule. "A given-son, "must never claim the family, and estate of his natural "father. The funeral cake follows the family and estate; "but of him, who has given away his son, the obsequies "fail."

A rule propounded by MENU.

7. The son-given, must never claim his natural father's family, and estate. Thus, 'the obsequies'—that is, the funeral repast [which would have been] performed by the son-given, fails of him, who has given away his son.

Explanation.

8. The author of the *Chandrika* thus explains, "By "this it is declared, that by the act alone, creating the filial "relation, property of the son-given, in the estate of his "adopter, is established, and connection to him as belong-"ing to the same family ensues: But through extinction "of the filial relation, from the mere gift, the property of the "son-given, in the estate of the giver, is extinguished; and "connection to the family of the giver annulled*."

Explanation in the *Chandrika*.

9. But, althoug by the text of MENU, connection to the family of the natural parent, is annulled: what proof is there, as to the connection to the family of the adopter being established: on this point VRIHAT MENU, declares,—"sons "given, purchased, and the rest, retain relation of *sapin'd'a*, "to the natural father, as extending to the fifth and seventh "degrees; like this, their general family, [which is] also that "of their adopter."

A text of VRIHAT MENU conclusive, that filial relation to the adopted father, is established.

* Vide *Smriti Chandrika*, Sect. 11. § 19 where this quotation in part occur.

Explanation of the text.

10. The relation as *sapin'd'a,* of sons given, purchased, and the rest, to the natural parent, continues : by gift, and so forth even, that does not fail ; for, by reason of consisting in connection through containing portions [of the natural father], it is not possibly to be removed, while the body lasts. By this it is declared, that the relation of *sapin'd'a,* in question, is the consanguineal connection only, and not connection by the '*pin'd'a*' or funeral cake ; for, that this latter is barred, is shewn by this passage,—" Of him, who has given " away his son, the obsequies fail." Anticipating a question as to the extent of this relation as *sapin'd'a,* the author adds,—" Extending to the fifth, and to the seventh degree, " &c." The meaning is this : 'Extending to the fifth degree'—completing five, that is—embracing,—five degrees. So, of the expression ' to the seventh degree.'

A text of GAUTAMA confirmatory.

11. GAUTAMA, also. " With the kinsmen, on the side of " the father (viz. of the procreator (*vi'ji*)) beyond the " seventh degree ; and with those on the mother's side, " beyond the fifth, &c."

The word '*viji*' occurring denotes generally the natural father, of any description of adoptive son, as proved by a text of MENU.

12. Here the word '*vi'ji*' (the procreator) is used, for the sake of comprehending every one even, the natural father of a son-given, and so forth ; not merely, the natural father of the son of the wife only : for, a text of MENU, exprsses, " As for these, denominated from the context, sons though " produced from the seed (*vi'ja*) of others : they are [sons], " of that person, from whose seed they severally sprang ; " and of no other*."

10. *By this it is declared, &c.*] The word '*pin'd'a*' signifies either the 'body' or a 'cake' or ball of food presented to the manes of the deceased : the word '*sapin'd'a,*' therefore, may denote either one consanguineally related, or one connected, through an oblation of such funeral cake.

12. *Here the word* 'vi'ji' *is used.* &c.] This word signifying literally, the owner of the seed, is more particularly used, to denote the person appointed to raise issue, on the wife of another : in contradistinction to the husband of such woman, technically called the '*kshetri,*' or owner of the soil. The author accordingly deems it necessary to explain, that the word as used by GAUTAMA, has not such particular and limited sense : this he supports by referring to a text of MENU, where the word '*vi ja*' or seed, is used, in respect to the natural father of any subsidiary son.

* MENU 9, 181.

13. 'They are sons of that person.' This declaration, that they are sons, is for the sake of propounding the connection of *sapin'd'a* [by the body]; and not to establish filial relation. For, that would be at variance with the declaration of filial relation [to the adoptive father], contained in this, and other texts,—" Of these twelve sons of men, &c.*" [—' Of no other'] not of the adopter.

Of whose text the sentence 'they are sons, &c.' is to declare the connection of *sapin'd'a.*

And the expression 'no other' to denote the adopter.

14. But analogous to the case of the daughter, may not the relation of '*sapin'd'a*' to both [the giver and the receiver,] be admitted: for, like the state of lineage, the relation of *sapin'd'a* is established by the adoption.—Should this be objected, it is wrong; for, it would be at variance with the text of VRIDD'HA GAUTAMA.—" The sons given, purchas-"ed and the rest, who are adopted, from those of his own " general family, by observance of form, acquire the state of " lineage [to the adopter]. But, the relation of *sapin'd'a*, " is not included."

Objection, that the relation as *sapin'd'a*, may subsist, to both fathers, refuted by a text of VRIDD'HA GAUTAMA.

15. Those sons given, and the rest, who are adopted 'from those of his own general family,'—from among his general family, acquire by the observance of form, ' the state of lineage,'—the state of offspring. But in respect to these, the relation of *sapin'd'a*, 'is not included' by the form,—meaning,—is not established.

Explanation of his text.

16. If the relation of *sapin'd'a*, be not established, in those even of the same general family, it is declared *a fortiori*, that such relation, is not produced in the case of one of a different general family.

Which, *a fortiori*, bars the relation of *sapin'd'a*, in the case of one of a different general family.

17. And, this is proper. As [in the case of the daughter] by reason of her proceeding from the father, and producing in concert with the husband, the same body, [their

Argument in favour of the general position, as to the consanguineal

14. *But analogous to the case of a daughter.*] A damsel retains the relation of *sapin'd'a* to her father who gives, and acquires the same, to her husband who receives her, in marriage.

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* MENU 9, 158.

relation of *sapin'd'a* to the adopter, not existing in the adopted.

issue,] the relation of *sapin'd'a* [by the body], to both is established: in the same manner, in the case, of the son-given, it is not established; for, though he proceed from the natural father, the producing in concert with the adopter, a common body is wanting.

Which is confirmed by a text of DEVALA.

18. Accordingly, DEVALA in the text subjoined, (since, the family name, a share, and the funeral cake, are specified,) by the term 'merely,' bars the relation even of *sapin'd'a.*—
"For, the sake of religious merit [being adopted] like
"the real son,' under the family name of each respectively,'
"(*tat-tat-gotrena)* sons [who are] reared: for such, merely
"participation in a share, and the [oblation of] the funeral
"cake, is declared."

Opponent's objection, that DEVALA's text regards a particular son, for religious merit.

19. But, is not this irrelevant to the subject proposed: for, it regards the son for religious merit? Thus:—in those sons, who like the real son, are reared for the sake of religious merit, 'under the family name of each respectively,' (that is, under the family name severally of each only,) does the mere participation alone in a share, and the funeral cake vest: not, (for such is the intent,) the relation of *sapin'd'a* to the adopter. Hence, the text imports the want of connection of *sapin'd'a,* of that son only, to the adoptive father: not of the son-given.

Refuted.

20. This objection if made, is denied.—For a son, for religious merit (*dharmaputra)* is not admitted, as [such admission] would be at variance with the enumeration in this text,—"Of the twelve sons of men, whom MENU, sprung "from the self-existent, has named, &c.;"—or even were such son admitted, as he is not classed in the series of heirs, (the wife and the rest,) he could not participate in a share: and the connection of *sapin'd'a,* not being possibly implied, to forbid it, would be unmeaning. Therefore, that text regards only, the son-given: since, it propounds participation in a share.

18. DEVALA *in the text subjoined.*] In the *Vyavah'ara Mayu'k'ha,* this text is cited, as attributed to NA'RADA, and alleged to be unauthentic.

21. Now, of the text in question, this is the meaning. 'For the sake of religious merit,'—(that is, for the sake of acquiring religious merit, obviating the exclusion of the man himself from heaven,) after being adopted 'like the real son,' —(that is, as substitutes for the same;) by the adopter, 'under the family name of each respectively,'—(that is, even under a family name, different with reference to the natural father,) sons who are reared: in these, merely participation alone, in the heritage, and [the oblation of] the funeral cake, of the adopter, vests: not connection as *sapin'd'a*. Therefore, it is established that in the text in question, the connection of the son-given, as *sapin'd'a*, to the adopter, is not declared: but on the contrary, his connection as such extending to the seventh degree inclusive, to the family alone, of the natural father.

Explanation of DEVALA's text.

22. But does it not follow on account of proximity, that sons, mentioned in the plural number required by the repetition of '*tat*,' are designated by that pronoun, not, on account of remoteness, the adopting party becoming possessed of male issue; for,—it would be improper, to apply to such, whose plurality is dubious, the repetition:—the pronoun '*tat*' designating (as it were) a person not immediately obvious, cannot bear an import in the sense of '*atma*' (self): —and the possessive pronoun '*swa*' (own) denoting the person immediately obvious, only would have been proper.

Opponent's argument, that sons are alluded to by the pronoun in DEVALA's text.

23. Should this be alleged: we assert the contrary. According to the maxim,—"The application of pronouns is to "the object presented to the mind,"—the adopting party, is indicated by the pronoun '*tat*' ('of each,&c.') For, the

Refuted.

22. *Required by the repetition of* '*tat*.'] This pronoun is repeated to denote, that the reference to the object is made distributively; it follows, therefore, that the object must be in the plural.

Not, on account of remoteness, the adopting party.] In DEVALA's text, though not expressed, the adopting party is understood, as the agent to the verb, in immediate construction with 'are reared,' in the passive voice: and is, consequently, more remote than 'sons,' from the phrase '*tat-tat-gotrena*.'

To such whose plurality is dubious.] The agent of the verb 'rear' not being expressed: its plurality or otherwise is not certain.

being the object presented to the mind, depends on being principal: and the being principal, proceeds, from being the object to be perfected, or, from relation to the effect. Now, the father is principal, by reason of being the object, to whom accrues the effect, consisting of heaven,which in virtue of such text as,—"by a son, he conquers worlds, &c." —is to be produced, by an act, the instrument of which, is a son: and because, by thoroughly considering this and other texts,—" the rites for the father, consisting of oblations of food, and libations of water, to be performed by the "son, &c.,"—it appears the father is the object, to be perfected as such, by rites of oblation of food, and so forth, the agent of which is the son.

And analogous reasoning from the *Míma'nsa'* cited.

24. Thus. "He mixes coagulated milk *(dad'hi)* in boiled "milk: that is a curd of two-milk whey *(ámikshá)*, an "oblation for the *Vaiswadeva* set of divinities." It being settled, that the curd here alluded to, by reason of being formed of mingled coagulated milk, and milk, is an altered mode of what was intended to be offered: should it be alleged by the opponent, that the coagulated milk is what is altered; since that alone, designated by the pronoun 'that,' (for, the coagulated milk mentioned in the accusative case, is principal by reason of the milk, mentioned in the locative, being secondary,) refers to the divinities:—it is thus demonstrated by the supporter of the right opinion, that the milk is what is altered. As the milk is pervaded by the coagulated milk, although the object [of the verb 'mixes,'] by reason of this consequent result of the import of the passage,—

24. *He mixes coagulated milk* (dad'hi) *in boiled milk, &c.*] The author alludes to and enlarges on a portion of the 9th topic of the 1st section of the 4th book of JAIMINI'S *Mímánsá*. In the *Védas*, this passage occurs. "He "mixes coagulated milk, *(dad'hi)* in boiled milk, that is a curd of two-milk "whey *(ámikshá)*, an oblation for the *Vaiswadeva* set of divinities, and whey "for horses [on particular ceremonies."] In the part of the *Mímánsá* specified, it is proposed for a discussion whether the curd and whey, viz. the grumous and serous parts of this compound, are collectively, the object of the act, or only the curd. Since both are equally produced by the act of admixing the coagulated milk, the first supposition, might be inferred: it is however thus demonstrated, that the curd, formed as mentioned, is the object

(' he perfects milk by coagulated milk,') the milk alone is principal. Therefore, this only, designated by the pronoun ' that,' relates to the divinities. Analogous to this, in the case in point also, it is correct to say, that, since the father is principal, by being the object to be perfected, he only is designated by the pronoun ' *tat.*'

Argument, against the position, that the adopted is not related as *sapin'd'a*, to the adopter, refuted.

25. But should it be objected, if the son given, bear not the relation of *sapin'd'a,* to the family of the adoptive father; why should not his marriage take place therein? Excellent! we reply,—on account of his belonging to the same general family.

Further objection of opponent.

26. Then his marriage might take place, with the offspring of the adopter's sister, and so forth, for connection by identity of family, and that of *sapin'd'a,* are wanting : nor, do we at present find any text prohibitory of this. On the

proposed by the act, and that the whey is incidentally or subordinately produced. The curd, it is urged, is no other than the milk itself, to which the coagulated milk is admixed, as is argued,—1st. from the use of the pronoun ' that,' which indicates the boiled milk, for, that is principal,—2nd, from the import of a preceding portion of the V*è*das, referring to the oblation of curd, produced by the process in question, which recites," consume this milk "—3rd, from the analogy of taste, the curd and milk, both being sweet : whereas, the whey is sour.

26. ' Sa'vitri' *incantation.*] This (otherwise called the *Gáyatri*), is a verse of the V*è*das, the mental recitation of which, is an essential part of the daily observances enjoined the *Brahman*, to whom, when invested with the characteristic thread, it is taught with an injunction of secrecy.—For the insertion here, of this mystical verse, the curious reader is indebted to Ra'm Mohan Ra'y, an enlightened *Hindú*, distinguished by learning, but still more by the liberality of his sentiments, well evinced in the different publications which have emanated from his pen.—The text of the *Sávitri* runs thus :

Om ! B'húr-b'havah-swah !

Tal-savitur-varenyam b'hargo devasya d'hi'mahi d'hiyo yo nah prachodayát.

This may be translated,—" Glory to the Almighty in his triple character of ' the preserver, the destroyer and creator : —to the earth, sky and heavens— ' We contemplate that desirable light of the resplendent sun, who directs our ' intellects."

On this Ra'm Mohan Ra'y makes the following comment, founded on interpretative passages from the *V'edas*, Menu and Ya'jn'ya walkya,—" *Om!* " This mystical word is composed of the letters *a*, *u* and *m*, and is the emblem " of God the author (as respectively intimated by those three letters) of pre- " servation, destruction and creation.—Those letters likewise express that " with respect to sentient beings, he rules the states of waking, dreaming and " sound sleeping.—This word is called the *prañava* or high praise.—' *B'húr-* " *b'havah-swah*'—These words signify the earth, sky and heavens.—This is " called the *vyáhriti,* or universe, or all comprehending.—These (the *prañava*

contrary, there are passages in favour of it, such as, "Let "not any one marry the daughter of that person, who taught "him the *sa'vitri* incantation : but marriage in the general "or also in the peculiar family, of that person, does not "however occasion an offence." Yet, this is not an intended consequence : for, it is at variance, with the universal practice of good persons, uninfringed, and by holy writ unforbidden. Therefore, what reason is there against marriage, in such instance.

A reply to which by a certain author, is recited.

27. On this subject, it is replied by a certain author. "She who 'is not connected, as *sapin'd'a,* to his mother, "'and father, *(pitus)* and not belonging to the general fa- "'mily of either, is approved amongst twice-born men, for "'espousal and connubial intercourse*.' As for the men- "tioning a female not connected as *sapin'd'a* to the father, "in this text of MENU, in which [if the son of the body "were regarded], it should have been expressed,—'not "connected as *sapin'd'a* to himself'—that is only, to declare, "that the marriage of an adopted son, must not take place "with a woman connected, as *sapin'd'a,* to the adoptive "father: otherwise, the marriage of a bridegroom, the "eighth in descent from the common ancestor, (his kindred "being through his father) with a bride, the sixth from

"and *vyáhriti)* are prefixed to the *Gáyatri,* to make it complete. The three "combined imply that,—we contemplate God, the author of preservation, "creation and destruction,—the support of sentient beings, in the states of "waking, dreaming and sleeping,—who comprehends the universe,—and is "that desirable inherent light of the resplendent sun : that, *as our internal* "*light,* directs our understandings *towards righteousness,*—or in short, that, "God is all in all."

27. *Otherwise.*] That is, supposing that real legitimate son were referred to, and not the adopted son.

Her descent being through her mother.] A restriction to this effect, was necessary: for, if a female did not intervene between the proposed bride and ancestor common to her, and the bridegroom, they would belong to the same general family, and their marriage consequently illegal, as will appear from the following note.

Such as: "*Beyond the fifth, &c.*] The passage here cited is from YA'JN'YAWALKYA. The following is a translation of, the text where it occurs, and those immediately preceding and following. "Having given a present to his

* MENU, 3, 5.

"such ancestor, (her descent being through her mother) "might not take place: for being related as *sapin'd'a,* to "the father of the bridegroom, her non-connection as such "is wanting. But what was required, would not thus re-"sult: for it would be at variance with the practice of good "persons, and texts of every code of law; such as: 'Be-"yond the fifth and seventh degrees, on the mother's side, "and the father's side, respectively, *(ma'tritah-pitritas-"tat'ha)* [the relation of *sapin'd'a,* ceases].' Nor can it "be alleged, that this objection is equally applicable to the "adopted son also; since it follows, such son, the eighth, "and a damsel, the sixth, in degree, by reason of her being "related, as *sapin'd'a,* to his father, may not intermarry. "For, under this text, subsequently recited ('the relation "of *sapin'd'as,* ceases, with the seventh person*, &c. &c.') "the father of the adopted son, the seventh in descent, not "being related, as *sapin'd'a,* to the common ancestor,— "by reason of the bride, the sixth in descent, consequently "not being so connected to him,—such bride, the sixth, and

"preceptor, he should perform the ablution [prescribed for the conclusion of "studentship]: Having completed a *Véda,* or the acts of merit, called "'*vrata*:' or both; persevering in holiness, let him marry a perfect woman: "one not previously married or deflowered: beatiful: unrelated to him as "*sapin'd'a:* his junior: free from disease: having a brother: born in a "family, not following the same *Rishis* (or patriarchal saints). Beyond the "fifth and seventh degrees, on the mother's side, and the father's side, respec-"tively, [the relation of *sapin'd'a,* ceases]. From an illustrious race of *Brah-"manas* well versed in holy writ, of which ten ancestors are known, [the "bride must be taken,] but not from one affected by an infectious disorder, "though free from reproach." In the *Mitákshara,* the following comment on the quoted part of these stanzas occurs. " 'On the mother's side *(Mátritah),*' " --that is,—in the line of the mother, after the fifth degree. 'On the father's "side'—that is,—in the line of the father, after the seventh degree,—'the "relation of *sapin'd'a,* ceases'—as is understood; and this term '*sapin'd'a,*' "though on the force of kindred, applying to every degree, refers only to "those restricted: analogous to the words, '*nirmmathya*' '*pankaja*' and the "like†. Accordingly, there are six *sapin'd'as* in ascent, the father, and the

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* Menu, 5, 60.

† Of these words, the first is used to denote fire produced by friction on the actual occasion of being required for a sacrifice: the second, to signify the *lotos:* they do not, as might be supposed from their etymology, signify respectively, any fire kindled by friction, and any aquatic plant. (v. *Mímánsa'* of Jaimini) 1, 4, 10.

"the father of the bridegroom, the seventh, are not mutu-
"ally connected as *sapin'd'as:* as has been already declar-
"ed. Therefore, there is no inconsistency, in alleging that
"this text even is decisive of the relation of the adopted
"son, as *sapin'd'a* [to the daughter of his adoptive father's
"sister, and so forth]."

This reply refuted as very erroneous.

28. This is very erroneously stated: for, either of these alternatives, [one of which under the foregoing construction must be assumed] is admissible. Accordingly, is the text in question, decisive of the relation of *sapin'd'a,* of an adopted son only; or, of both the adopted son, and the real legitimate son? The first proposition is not correct: the text may, in two ways, relate to the son-given; either from such son, being the subject treated on, or the text having the same meaning, with a special text conclusive, of the adopted son's relation, as *sapin'd'a.* Now, in this case, there is not either of these two causes, since they do not appear. Besides, did the text in question intend the adopted son, the term 'father' by a secondary import, would mean the adopting father; and that is not intended; for, it would be at variance with the rule of logic, "In a precept, the sense "of a term is not secondary." Nor, also is the second position accurate, since it is forbidden, to attach both senses to the word, 'father.' Nor is there, as in this instance,—"There "are fish, and cow house, in the Ganges"—any proof, arguing the implied intent of a secondary sense. Therefore, the text in question, is relative alone to the son of the body; for, conception, and so forth, are the subject treated on, and it is declaratory of the same effect, as this and other texts: "Beyond the fifth and seventh degree, &c."

"rest: and six in descent, the son, and the rest, and the man himself, is the
"seventh. Should the line diverge, the enumeration should be made, until
"the seventh degree, commencing from whence the direction of the line
"varies. This is applicable to every case."

28. *As in this instance,—"there are fish and a cow-house in the Ganges."*] Here the word '*Ganges*' in its primary sense obviously signifies the river, so called, in which the fish exist, and in a secondary sense, the bank, on which the cow-house stands.

29. Neither can the objection specified, be alleged,—viz. that, if the text regard the real legitimate son, it would follow, that a bridegroom the eighth, from the common ancestor, and a bride the sixth, might not intermarry, on account of her non-connection to his father, as *sapin'd'a,* being wanting. For, that is no real objection from its being founded in a mistake of the ablative case, *(pituh)* for the genitive [inflected the same]. Accordingly, in this sentence "*má-tritah-pitritastatha*" ('on the mother's side, and father's side, respectively')—the grammatical affix '*tasil*' conclusive of the case being the ablative, is used by the chief of saints. Should a doubt arise, from this affix also, being used as the inflection of every [oblique] case,—the ablative is rendred certain by this text of GAUTAMA,—"With the kinsmen on the side of the father, *(pitri-band'-"hub'hyah,)* (viz. of the procreator beyond the seventh "degree, and with those on the mother's side (*mátri-"band'hub'hyah*) beyond the fifth, &c." Thus, that noticed, is not any satisfactory reply, another must be declared.

The argument also in the reply, that the text of MENU cited, does not refer to the legitimate son, is founded in a mistake.

YA'JN'YAWALKYA, cited.

GAUTAMA.

30. . This others have propounded—"Sages declare these "eleven sons (the son of the wife, and the rest,) as specified "to be substitutes for a son; for, the obsequies would "fail*." Since in this text, the son of the wife, and the rest, are declared, to be substitutes for the real son: by the maxim of logic,—'the substitute possesses his virtue,'—the whole virtue of the legitimate son being inferred in them, the exception [from marriage with them] of a female *sapin'd'a,* of the adoptive father, must follow.

Another reply propounded.

31. This is not accurate: for, as the representation of the relation of *sapin'd'a,* forbidden by this passage,—"the relation of *sapin d'a,* is not included"—would be impossible:

And refuted.

29. *The ablative case is rendered certain by this text of* GAUTAMA.] The word '*band'hub'hyah*' occurring in the phrases, *patri-band'hub'hyah,*' and *matri-band'hub'hyah*' can only be the fifth or ablative case.

* MENU, 9, 10.

that not being obtained, the exception of such female could not take place. Hence, it is disproved that the exception [from marriage], of the female *sapin'd'a* of the adoptive father, is established, from the representation of the virtue of the real legitimate son [existing in the substitute], by reason of the name of 'son.' For, analogous to the case exemplified in the passage,—"an animal being the object he performs not these two [rites],"—the representation of the relation of *sapin'd'a,* which is forbidden, being impossible, the exception could not subsist.

Correct solution of the question in § 26.

The relation as *sapin'd'a,* of the adopted, to the adopter's family, is founded only on express texts.

32. Therefore, not being otherwise inferrible, the relation of '*sapin'd'a,*' in the peculiar family *(kula)* of the adopter, as founded only on express texts of law, must be admitted. This is declared. Relation of *sapin'd'a,* is of two descriptions;—through consanguinity, and connection by a funeral oblation. Of these, the relation as *sapin'd'a,* arising from consanguinity, being obviously barred, in the case of the adopted son,—HEMA'DRI, (after having declared that relation, as arising alone from connection by a funeral oblation, and consanguinity,) has determined the relation of *sapin'd'a,* of sons given, and the rest, in the family of the adoptive father, as extending only to the third degree.

HEMA'DRI propounds it as extending only to three degrees.

So also KA'RSHNA'JINI.

33. And, so also KA'RSHNA'JINI—"As many, as there "may be, degrees of forefathers: with so many, their own "forefathers, lest sons given, and the rest, associate the

31. "*An animal,* &c. &c"] Allusion seems to be made, to the 2nd topic of the 1st chapter of the 12th book of JAIMINI'S *Mímánsá,* or perhaps to the 2nd topic 8th chapter of the 10th book of the same work.—Whatever may be the object to be offered, generally speaking, in sacrifices, the same rules are observed, and essentials necessary. It is however provided in the *Védas,* by the sentence quoted, that, where an animal is the offering, the two '*ájya-b'hága*' sacraments are not to be performed : this term denotes a rite, where clarified butter (*ájya)* is presented, and is applied more particularly, to two ceremonials of a sacrifice, where that article is presented, with recitation of two prescribed *mantras* or incantations. By the passage in question, the performance of these two ceremonials, in the case of the oblation of an animal, being interdicted, in alluding to such a sacrifice, there would be no occasion to except the ceremonials in question ; for, in such case their non-performance, being especially provided for, there would be no ground for inferring their observance.

"deceased: in order, their sons with two forefathers, their "grandson, with one. This is general: the fourth degree "is excluded: therefore, this is [a relation of *sapin'd'a*], "extending to three degrees."

Exposition of his text:—of the first part.

34. This is the meaning of the text.—According as the deceased adoptive fathers, may be sons, legitimate, adopted absolutely, or of two fathers; as many, as there may be degrees of forefathers,—three or six;—(that is, in the first of these cases, three,—viz. the natural father, grandfather and great-grandfather [of the deceased];—in the second, three,—viz. the adoptive father, grandfather, and great-grandfather; —in the third, three,—the adoptive father, and other two,—and three,—the natural father and other two,—) with so many not exceeding six, [as the case may be,] let sons given, and the rest, associate their acquired fathers.

Force of the epithet 'their own,' and reason of subjoining the part commencing, "In order their sons, &c."

35. The epithet "their own" is used, for the purpose of suggesting, that, all these, as many as three or six, (as the case may be,) who are forefathers of the adoptive father, are divine objects, contemplated in the ceremony of '*sapin'd'i-karana*,' performed for the adopted son, by his own son. And, hence it being deduced, that the forefathers of the adopter, are in fact divine objects, in the ceremony of, '*sapin'd'i-karana*' performed for the adopted son: the author propounds

35. *All these. &c. &c.*] The great-grandfather of the adopter, in the line of his natural father, and (if he be son of two fathers), his great-grandfather in the line of his adoptive father, would not be included in a set of three ancestors, to each of whom, at the *sapin'd'i-karana* for the adopted son, to be performed by his son, an oblation of food and so forth, (as specified in the preceding note,) is to be consecrated; unless, any of the nearer ancestors, survived such adopted son. But either of these great-grandfathers would be contemplated, amongst the remoter ancestors, denominated '*lepab'hák*,' to whom are offered the wipings of the oblations of food.

The ceremony of sapin'd'i-karana'] or rite of associating, the deceased with the manes of departed ancestors: it should strictly take place on the anniversary of the day of death, but is more usually performed, at the funeral repast of the 12th day from the decease: previous to its performance, the deceased is not denominated a '*pitri*' or departed ancestor. This rite consists in the following ceremonials: Four vessels called '*puti*' each of two leaves, are prepared. These are filled with water for the feet, scented wood, flowers, sesamum seed, and consecrated severally, to the deceased, and three nearest departed ancestors on the father's sides. The contents of that consecrated

a distinction ; "In order their sons with two [forefathers]" —that is with two of three, and four of six.—On this principle let the grandsons of the adopted son, perform the '*sapin'd'i-karana*' for their own father, with one (the father of the adopter), from amongst three forefathers of the adopter of their own grandfather : or, in the case of [such adopter] being son of two fathers, with both grandfathers, of their own grandfather. The author points out this rule, in respect to the adopted son, and his issue likewise.

Import of the sentence, 'this is general.'

36. 'This is general :'—that is, this ceremony of '*sapin'd'i-karana*,' where the adopted son, and his son also, are sons of two fathers, must be equally performed [by their descendants] with both sets of forefathers.

The sentence 'the fourth degree is excluded' why subjoined.

37. But, if this is the case : the '*sapin'd'i-karana*' for his own father, the grandson of the adopted son, being performed by the great-grandson of that person, with these three,—the son of the adopted, the adopted, and the adopter,—no alliance by a funeral oblation, with the three forefathers of the adopter, would exist ; as not one of them even is included. Accordingly, the author adds,—"the fourth degree is "excluded." The meaning is,—when any person may perform for his own father, the '*sapin'd'i-karana*,' he should do it, with three, the father, and other two ancestors of deceased, not with the fourth.

The reason for subjoining, and the import of the

38. But in the instance of the real legitimate son, is not thus the performance of the *sapin'd'i-karana* [for his father]

to the deceased, with the exception of a small part, is poured out in equal portions into the other three, with recitation of the two prayers commencing "*Ye samànya, &c.*" Then the observances of the *ekodishta* and *pàrvana* rites, with the variations necessary, take place, the same prayers being recited :—that is,—those of the former rite, are performed in honor of the deceased, and those of the latter in honor of the three ancestors abovementioned. Of the four funeral cakes, which would be thus offered, severally to the deceased, and the three ancestors in question, that consecrated to the deceased is divided into three parts, one of which is admixed with each of the other three cakes. It is from this, that the ceremony takes its name. The portion of the contents of the '*puti*' consecrated to the deceased, which is reserved, is for the purpose of being presented to deceased, amongst the other articles, the oblation of which, is part of the *ekodishta* rite, required to be performed in his honor. For a description of the *ekodishta* and *pàrvana* rites, v. supra, note to § 72 of Sect. iv.

with three forefathers only, established by holy writ? Being established then by this alone, for what purpose is the inconvenience of introducing another express text [to declare it]? Anticipating this objection, the author subjoins: "Therefore this," of adopted sons, is a relation of *sapin'd'as* extending only to the third degree, being productive of uncleanness and disability of marriage, and consisting in connection by funeral oblations. It is not such relation including the seventh degree, declared in the subjoined passage from the *Matsyapurána*: for, this being of a general nature is excepted by the special rule [in the case in point]—"The fourth "in degree, and the rest are partakers of the wipings [of the "oblations]. The father, and the rest, are participant of the "oblation. The seventh in descent, is the giver of the "oblation. Of these the relation of *sapin'd'a*, extends to "the seventh degree."

concluding part 'therefore this, &c.'

The author of the *sangraha* confirms.

39. Intending merely this, it is said by the author of the *sangraha*. "The relation as *sapin'd'a*, of adopted sons, "extends to three degrees in the family of the natural father: "and like that, in the family of the adopter. This is a rule "of law." The mention here of relation as *sapin'd'a*, in both families, is with reference to the son of two fathers, for, it has been shewn, that, the ceremony '*sapin'd'i-karana*,' for such son, is performed with two sets, of three forefathers. Of the absolutely adopted son, the relation of *sapin'd'a*, in the family of the adopter, consisting in connection by funeral oblations, extends to three degrees: in the family of the natural father, arising only from consanguinity, it extends to seven degrees. To enlarge would be useless.

Explanation of a part of VRIHAT MENU's text, cited in § 9, appositely introduced.

40. "Like this, the general family."] 'Like this,'—analogous to the relationship as *sapin'd'a*, the general family likewise, [of sons given and the rest,] is that of the natural father, who contributes the seed; not only of the natural father however, but also of the adopter. The general family of sons given, and the rest, is that of him also, who is the adopter of such son given, and so forth. By this, the relation

of *sapin'd'a*, is shewn to vary from the general family. Thus, that relationship is in the line of the natural father only, not so the general family; on the contrary, this is that of both [fathers] even. This likewise does not apply, to the general adopted son: but, is relative to the son of two fathers, a particular adopted son.

Dwyámushy-a'y-anas are of two descriptions, such as are absolutely so, and otherwise.

41. Accordingly, sons given, and the rest, [who are sons of two fathers,] are of two descriptions: Those absolutely sons of two fathers, and those incompletely so. Of these, those are named absolute '*dwyámushyáyanas*' who are given in adoption, with this stipulation,—'this is son of us two' (the natural father, and adopter). The incomplete '*dwyámushyáyanas*' are those, who are initiated by their natural father, in ceremonies ending with that of tonsure, and by the adoptive father, in those commencing with the investiture of the characteristic thread, since they are initiated under the family names of both even, they are sons of two fathers; but incompletely so. Should a child directly on being born, be adopted; as his initiation under both family names, would be wanting, he would partake only of the family of the adopter.

SATYA'SHA'DHA intends the same—Explanation of an aphorism of his by SAVARASWA'MI.

42. Intending all this, SATYA'SHA'D'HA says,—"of absolute '*dwyámushyáyanas*' of both, &c." By this compendious rule, having declared the connection of absolute *dwyámushyáyanas*, to the patriarchal saints in both families, the author by another aphorism, commencing,—"Of sons given, and the rest like the *dwyámushyáyanas*, &c.,"—ordains the same connection with respect to those incompletely *dwyámushyáyanas*. Now, this is thus explained by SAVARASWA'MI. "Treating on *dwyámushyáyanas*, the author mentions "those incompletely so, 'Of sons given, &c.' Unto those "only, not to issue beyond, [does the connection to both "families extend.] By the first only, the initiatory rites "[ending with tonsure, are performed.] If by the adopter, "[the family of the adopted,] is that of the latter: on ac-"count of priority. From this alone [the same is the case],

"in respect to a descendant beyond. So also those, who "are affiliated by a descendant of the same general family, "(as for instance a nephew, by an uncle,) are of the adop- "ter's family only."

Exposition of the meaning of this explanatory passage.

43. The meaning of this explanatory passage is this.— He only is connected to both families, who has been initiated under both family names; not descendants beyond. In reply to the question, as to the cause of connection to the family, of the natural father, the author says, "By the first, &c." 'The first;'—that is, the natural father: [the cause is,—] on account of the initiatory rites, being performed by him only.—Now the initiatory rites, [alluded to,] are those ending with tonsure: on account of this passage from the *Kálika-purána**. "Oh Lord of the earth, a son hav- "ing been regularly initiated under the family name, of his "[natural] father, unto the ceremony of tonsure inclusive, "does not become the son of another man." This has been already before explained. He does not become exclusively, the son of another: but, is a *dwyámushyáyana*, or son of two fathers.

The same continued.

44. Anticipating a question, as to what would be the case, were the initiation performed by the first; the author adds, —"If by the adopter, &c." If every initiatory rite from that on birth, or even those commencing with tonsure, be performed by the adopter only, the family [of the adopted] is of the latter,—that is,—of the adopter only. For this, a reason is subjoined:—"on account of priority"—meaning,— from precedence in the performance of initiation.

The same continued.

45. The author declares, the family, (required to be known,) in the instance of the issue of the *dwyámushyáyana*, and that of the [absolutely] adopted son:—"from this alone" —from the initiation taking place, under the family name only of the adopter, in both instances even, his, is the family of the descendants beyond.

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* V. supra sect. iv. § 22.

The same concluded.

46. The author alludes to the adoption of one belonging to the same general family,—"so also, &c." that is,—if the natural and adoptive fathers belong even to the same general family, the distinctive appellations are fixed by the adopter only, for the adoption, and initiation are performed by him.

A text of MENU, barring the relation of the son given, to the family of the natural father, does not refer to the son of two fathers, on account of a text of PARIJA'TA.

47. The text, ("A given son, must never claim the family, and estate of his natural father, &c."*) must be considered applicable to the case, where every initiatory rite, from that of birth, is performed, by the adopter only: but the son given, and the rest, who are absolute *dwyámushyáyanas* belong to both families; on account of this passage of PARIJA'TA;—"Sons given, purchased, and the rest, "who are sons of two fathers, may not marry in either "family even: as was the case of SRINGA and SAISIRA†." 'In either family'—in the family of the natural father, and in that of the adopter.

Whose text, that in § 42, and the one here noticed, prove that adopted sons, may be sons of two fathers.

48. With respect to the sons given, and the rest being sons of two fathers, this text and that of SATYASHA'D'HA, commencing ("of absolute" "*dwyámushyayánas*"), are authority. With the same intent, it is declared also, in the "*pravara-manjari*:" "For the most part, sons given, pur-"chased, and made, the son of the appointed daughter, and "so forth, belong to both general familes, with connection "to the patriarchal saints of each." From this alone, on the occasion of the marriage of those, appertaining to two families, both families, with each of which their connection to the patriarchal saints, is involved, must be avoided.

The '*s'ák'há*' is that of the adopter: as shewn by VAS'ISHT'HA.

49. The *s'ák'há*, or peculiar branch of the *V'edas*, is that of the adopter only. VASISHT'HA declares so:—"Sprung "from one following a different '*s'ák'há*' (or branch of the "*V'edas*), the given son, even when invested with the "characteristic thread, under the family name of [the man]

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* 9. 142. † V. supra note to sect. 1, § 31.

"himself, according to the form prescribed by his pe-
"culiar '*s'ák'há*,' becomes participant of the duties of
"such *sák'há*; *(swa-sák'há-b'hák*.") That duty, in which his peculiar, (that is the adopter's) *s'ák'há* prevails, is a duty of such *s'ák'há*; in this, he shares, or is "participant, &c." Such rite only, which is prescribed by the *sák'há*, of the adopter, must be performed by him. This is the meaning.

Explanation of his expression '*swa-s'ák'háb'hák*.

50. The forefathers of the adoptive mother only, are also the maternal grand-sires of sons given, and the rest: for, the rule regarding the paternal, is equally applicable to the maternal grand-sires [of adopted sons].

The maternal grand-sires of adopted sons, are in the line of their adoptive mothers.

51. As for what is said by HEMA'DRI, that the precept injoining the performance of a funeral repast, in honor of the maternal grand-father, refers to the natural maternal grand-father; that is inaccurate: for, it is at variance with the passage,—"of him, who has given away his son, the obsequies fail."* Nor, is the capacity of the maternal grand-sires, as givers, wanting: for, by reason of their affording their assent to the gift, (as appears from this passage,—"having convened his kindred, &c.")—they also are parties to the same. Besides, by this passage,—"the funeral cake follows, the family and estate†"—the family and estate, are declared to be the cause of performing the funeral repast; and the estate of the maternal grand-father also, like that of the father, lapses from the son given. His incapacity to perform a funeral repast, in honor of his original maternal grand-father, is properly declared.

A passage of HEMA'DRI, to the contrary effect, refuted.

52. Accordingly, HEMA'DRI himself, from not being satisfied with that [just stated,] has advanced the other position: "In the same manner, as for the secondary father, a
"funeral repast must be performed in honor of the secondary
"maternal grand-father, and the rest."

HEMA'DRI too has elsewhere advanced the other position.

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* 9. 142. † 9. 142.

Which is shewn to be accurate by several arguments.

53. And this even is proper. The adopted son, as substitute for the real legitimate son, being the agent of rites performed by a legitimate son, it follows, that he is the performer of funeral repasts, the objects of which, are the manes, in honor of whom, a legitimate son performs such repasts. For:—without difference, relation to the father, and other sires of the adopter obtains; in the same manner, as relation to the general family, the *s'ák'há*, the family-deity, and family-rules, of that person:—the term 'son' is used without restriction in these and other passages;—"Fathers desire sons." "The son, who shall go to *Gaya*, &c.:"—and further: if the adoptive mother be espoused, according to the forms of marriage of the *Asuras*, and the rest, by reason of the father only, of such acquired mother, being the maternal grand-father, to be contemplated in the ceremony of *sapin'd'a-karana*, propounded in texts similar to the subjoined; it is proper, that, his manes should be consecrated in a separate funeral repast. "At the close of the year, by sons, "the father must be associated with the paternal grand-father: "the mother must be associated with the maternal grand-"father. Thus, saith the illustrious YAMA."

And thus the adopted son, does not incur the offence of *parivedana*, as declared by GAUTAMA.

54. Accordingly, sons given, and the rest, do not incur the guilt of a '*parivitri*' and the like: for, a text of GAUTAMA, recites;—"By marriage, and the establish-"ing a consecrated fire, the offence of '*parivedana*' does "not attach, to a half-brother, a son given, and the son of a "paternal uncle likewise."

Exposition of his text.

55. 'To a half-brother'] On the marriage, and so forth, of either of two brothers, by different mothers, the offence

53. *Of the* Asuras *and the rest.*] That is,—of the *Gand'harvas*: of the *Rakshasas*; and of the *Pisáchas*. Were she espoused, in either of the four superior forms of marriage,—viz. those of,—*Brahma*,—the *Devas*,—the *Rishis*—and the *Prajapatis*—at the ceremony of *sapin'd'a-karana* performed for her, she would be associated with the paternal grandmother, and so forth, and not with the maternal grandfather, and the rest.

54. *The guilt of a* parivitri.] or offence of *parivedana*; this consists, in a younger brother, marrying before his elder, or establishing a consecrated fire, while the elder may not have done the same.

denominated '*parivedana*' is not incurred. This is the meaning. 'A son given'] It is meant,—that, although there be an elder brother in the family of the natural father, the adopted son, is not, (should he marry and so forth,) a '*parivitri*;' nor, also by such previous marriage and the like, of the younger, is the elder, a *parivitta*, or person passively implicated in the criminal acts alluded to. 'The son of a paternal uncle'] On the marriage, and so forth, of the '*kshetraja*' son of a brother, begotten [on his wife], by her brother-in-law, or on the same of the legitimate son of such brother-in-law, the guilt of being a *parivitta*, *parivitri*, and the like, is not incurred, by such son of the brother-in-law, or such '*kshetraja*' son, respectively. This is the meaning.

Gautama's expression 'the son of a paternal uncle,' does not refer to the mere nephew.

56. 'The son of a paternal uncle' in the general sense of the terms, is not meant: for, one adopted, is suggested by the expression 'a son given;' and, by reason of there being no grounds for supposing, an unadopted [nephew to be referred to], (as the prohibition [against previous marriage, and so forth], does not apply to him,) there can be no rule, for exempting him from the same.

Objection refuted.

57. Nor must it be argued, that from the particular authority in question, the filial relation of a brother's son, though unadopted, is established; for, this is obviated by the several objections before stated*: viz. where, of ten brothers, five were without male issue, and five had each ten sons, it would result, that the brothers destitute of male offspring, would severally have fifty sons; and it would follow,

57. *Nor must it be argued, &c.*] The offence of *parivedana*, is incurred by those bearing a mutual fraternal relation. The text of Gautama exempts those specified from the operation of this rule. If his expression 'son of the paternal uncle' be considered to refer to the mere nephew, there would be room to suppose, that a nephew, though unadopted, bore filial relation to his uncle.

* V. supra, sect. 2. § 63.

that the fifty sons, would each have ten fathers. Therefore, the interpretation given, only is accurate†.

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† In this place the following passage is contained as part of the text, in some MSS. though omitted in most: "Also the articles presented at the "funeral repast, in honor of a kinsman of the adopter, are not to be given to "the adopted, nor the articles presented at a funeral repast for a kinsman of "the adoptive, or natural father, to the son of two fathers: on account of "this text, cited by HEMA'DRI and PARIJATA;—'He should not cause to be "given to a near or distant kinsman, the oblation at a funeral repast: in the "same manner, he should not present with food at the funeral repast of his "father, one having the same set of patriarchal saints.' The 'oblation at a "funeral repast,' is, what is offered on that occasion."—This passage may accurately belong to this section, treating on the rules relative to the adoptive son.

SECTION VII.

For the legitimate daughter, there may be the different substitutes, corresponding with those for the son.

1. As on defect of the legitimate son, so on defect of a legitimate daughter likewise, daughters of the wife, and the rest, are substitutes, on account of the rule of logic, "on defect of the principal a substitute, &c." Now she is principal, by reason of her being the means of completion in the precept enjoining gift, and so forth. And, a daughter produced according to the precept directing conjugal intercourse at due season, is such means; in the same manner as rice, and so forth, acquired according to the rules of acquisition, are the completive means of a sacrifice.

For the legitimate daughter, there may be substitutes as for the legitimate son.

Reason.

2. Accordingly, it appears from the argument exemplified in the instance of the sacrifice at night, that progeny *(praja)* only, deduced from revealed law and indifferently male or female, is liable to be produced under the positive precept, regarding connubial intercourse at due season, contained in such passages as this commencing,—"Let him approach in due season, &c."—and inferred, from these and other confirmatory passages;—"We (women) obtain progeny, from the approach of [our husbands] at due season."—"They obtain progeny, from approach at due season."—For, the etymology being thus; *praja* (progeny) from '*prajanayati*' (one who procreates), by the word *praja*, a male or female being only, possessing generative powers, is intended; not one of the neuter gender: for, such, being produced from equality of the male and female seed, is a monstrous production.

Issue, indifferently male or female, is the object proposed to be produced, under the rule regarding connubial intercourse.

3. Therefore, should no issue *(santati)*, such as is contemplated in the passage following, be produced, descent to a region of horror, is ordained.—"Not having read the

From not having issue a person sinks into hell.

"*Védas:* not having produced issue: and not having per-"formed the various sacrifices, a regenerate man desiring "absorption, falls to a region of horror."

Etymological import of '*santati*' (issue) and '*apatyam*' (offspring) occurring in the passage subjoined, from which it appears these words intend a child of either sex.

4. What prolongs lineage, is '*santati*' (issue), a synonime of '*praja*' (offspring); for, a passage of the *kosa,* or vocabulary of AMERA, expresses: "*praja* stands for "*santati*" (issue) and '*jana*' (people)." Thus is explained the word '*apatya*' (offspring) occurring in the passage subjoined: on account of,—a text of YA'SKA which expresses,—"'*apatyam*' (offspring) that is from whom there is exemp-"tion from falling into hell *(apatana)*: or through whom "one falls not *(patati)* into hell;"—and this passage of the *kosa,*—"The synonimes signifying 'son' are,—*atmajas-*"*tanayah-su'nuh-sutah-putrah*: all these terms in the "feminine, signify a daughter. The terms '*apatyam*' and "'*tokam*' apply to the two sexes."

Passage cited in which '*apatyam*' occurs.

5. "For the sake of offspring, *(apatya)* were women "created: woman is the soil; men, the sowers of the seed: "to one possessed of seed, must the soil be given; but one "destitute thereof, deserves not the soil."

From a passage of YA'SKA, it appears the word '*pumán*' usually used in the sense of male, may signify a person possessed of generative power, male or female.

6. "Here '*pumán*' (male) is '*purumán*' (comprehend-"ing much): or its etymon, is the root *puns* (to cover, daub, "&c.)."—Although by this passage from YA'SKA, the word *pun* (male) signifies one knowing much;—still from this part of his passage, in question,—"or its etymon, is the root *puns* (to cover, &c.),"—it must be interpreted, as signifying persons both male and female, possessing the procreative faculty.

And in the same manner '*putra*' signifies a child male or female.

7. Accordingly, YA'SKA has shewn by the following passage, that the term '*putra,*' there occurring signifies children of both sexes (*mit'huna*). "That children male and female "*(mit'huna)* are heirs, is declared by these two stanzas.—"'From my several limbs, thou art distilled; from my heart, "'thou art produced. Thou art indeed self, but denomi-"'nated son *(putra)*: may thou live an hundred years*.'

* Of the *Védas.*

"—'MENU, descendant from the self-existent, hath declar-
" 'ed at the commencement of the world,—without distinc-
" 'tion, that wealth is that of children *(putra)* male and
" 'female *(mit'huna)*.' "

8. It must not be alleged, that the term '*mit'huna*'* in the above passage intends, the son and daughter-in-law; for, the text,—" From my several limbs, thou art distilled, &c."—would be impertinent; and the exclusion of the daughter from inheritance, according to the doctrine of some, mentioned in this passage, would be incongruous. "Not "daughters:—thus some. [But by me] the male, is recog- "nized as an heir: the female, as an heiress."

Objection obviated.

9. As for the term '*putra*' (son) used in this, and similar text: "Heaven awaits not one destitute of a son *(putra)*;" that also even, signifies both sexes. For, it is declared by PA'NINI, in the following rule, to be a complex expression (formed by the rejection of one term, and retention of the other) denoting son and daughter. "The expres- "sions *b'hrâtri* (brother) and '*putra*' (son) are severally "inclusive of sister and daughter†." By this, is explained the term '*putra*' (son) in such texts also as,—" By one " destitute of a son, must a substitute for the same be always "made,&c."

The term '*putra*' used in different passages cited, shewn to mean a child of either sex.

10. And, as conforming with this doctrine, the indication of the affiliation of a daughter, will be subsequently declared‡.

Examples will be cited indicating the adoption of daughters.

11. Accordingly it is said,—"Equal to him, is the *putrika-suta,* or daughter appointed to be son§"—"as a

Passages cited shewing the equality and analogy

8. ***And the exclusion of the daughter from inheritance.***] If MENU, by the term '*mit'huna*' did not intend children male and female; but the son, and his wife, why in a corresponding passage of another *Muni* here subjoined, should mention be made of the exclusion of daughters, from inheritance, according to the doctrine of some?

* Literally, a couple, a pair.
† Pánini, 1. 2. 68.
‡ V. infra § 30, &c.
§ YA'JNYAWALKYA.

between sons and daughters.

son, so does the daughter of a man, proceed from his several limbs*,"—and,—"If by the inauspiciousness of destiny, a "daughter should not be born; then that must be propitiated "by the observance of rites, such as repasts in honor of the "deceased, on the first day of the dark fortnight; in the "same manner as the destiny for a son, by funeral repasts, "and the like, on the forth day of the same."

A passage seemingly conflicting, explained consistently.

12. "Thus approaching, let him beget a son." As for what is suggested by this, that a son only is the object proposed to be produced in an act, the only means for completing which, is the approaching: that is a recital of 'son,' intended to shew, the commencing act of one desirous of male issue; the author having first determined, a son,—one of the male and female children alluded to by the term progeny *(praja)*,—to be the fruit of the essentials *(guna)* mentioned in the same passage.

Essentials causing the production of male offspring, as specified by different authors.

13. And, these essentials in this and other texts,("thus, &c.") are explained by the holy saint MENU, and the rest, to be,—on a night whose date is an even number, predominance of the virile seed; and passiveness of the woman:—the moon being in an auspicious mansion:—the ceremony, '*punsavana*,'—destiny, and so forth.

13. *In this and other texts ('thus, &c.')* The text of YA'JNYAWALKYA alluded to, is the following: "Thus approaching a passive woman, he should "avoid the *Magha* and *Mula* constellations. The moon being in an auspici- "ous mansion, let the man beget at once, a son, eminent in qualities."
The ceremony 'punsavana.'] A description of this ceremony and that denominated *Simàntonnayana* occurs in the following note, subjoined by Mr. COLEBROOKE, in § 28 Chap. ix of his translation of *Jimuta Vàhana*. "The first "of the ceremonies here named [viz. the *Punsavana*] is celebrated at the close "of the third month of pregnancy. It consists of the following prayer, reci- "ted by the husband addressing his pregnant wife, 'Male are MITRA and "'VA'RUNA (the sun and the regent of sea); male are the twin sons of "'ASWINI. Male are fire and air: may the child in thy womb prove male.' "'The recital of this prayer is preceded by burnt-offerings of clarified butter. "The other ceremony mentioned should be performed in the fourth, sixth, "or eighth month of the pregnancy. The husband decorates his wife's head "with minium, ornaments, and other articles: reciting divers prayers for a "fortunate gestation."

* VRIHASPATI.

14. It is explicitly propounded by A'SWALA'YANA also, that in marriage, a son and daughter, are the fruit of particular essentials.—"Let the man take the thumb of the "woman, repeating the portion of the *Ve'das*,—'I take your "hand for your prosperity'—should he thus desire,— "'may my children be born males only;'—[let him take] "the fingers alone: if his desire be for female issue, the "hand in the middle: if both be desired, the hand in the "middle, including the thumb."

A'SWALA'YANA specifies essentials severally, conducive to the birth of male and female issue respectively.

15. By this is explained the passage,—" On the odd "nights, daughters, &c.*"

His text illustrates a passage of MENU.

16. Therefore, in the same manner, as the son, by reason of being the means of procuring heaven, as the agent in the performance of the funeral repast, and so forth, is principal; the daughter also, being the same, by reason of her being the means of accomplishing the precept, enjoining gift, the funeral repast, and so forth; on defect of her, a substitute is proper.

Conclusion.

17. "'*Duhitá*' (a daughter)—that is—'*duro-hitá*' or "'*du're-hitá*' one remotely benefiting; [derived] like "'*dogd'há*' (a milker)." By this analysis YA'SKA shews, that the daughter benefits her father, by means of her son also— MENU likewise. "Now between the sons of his son, and "of his daughter, there subsists in this world no difference: "for even, the son of a daughter delivers him in the next, "like the son of his son." And, in the *Mahab'hárata* this "speech of GA'ND'HA'RI. This one daughter born after one "hundred sons, shall be mature. Hence, I shall obtain

YA'SKA and other authorities cited, shewing benefit to be derived from a daughter, thro' her son:

17. [*derived*] *like* dogd'ha *(a milker).*] *Duhita'* and *dogd'há* are equally derived from the root '*duh*' (to milk), by the subjunction of the affix '*trich*' of which the '*ch*' is servile.—To form the first of these terms, the augment '*it*' is interposed, by the option allowed by a special rule: and in forming the second, such augment not being used, by other special rules, certain permutations are undergone, by which the term *dogd'há*, is produced.

* MENU, 3. 48.

" worlds acquired by a daughter's son.—This is my persu-
" asion."—In another authority also: " Are daughters also,
" real legitimate children of their father and mother? For-
" merly one falling, being upheld by a daughter's sons, did
" ascend to heaven."—' By a daughter's sons,'—by the sons of MA'GHAD'HI of the description denominated '*kánína*' through funeral rites, performed on the eighth lunar day and the like.

From which it is to be concluded, that on defect of the real, a substitute daughter, is to be adopted.

18. Consequently, on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting the *kshetrajá* and other adoptive daughters even, substitutes, is established. Nor is there any express passage of law, as to there being a substitute for rice, [that it should be objected, that there is no express passage authorizing a substitute daughter.]

Objection obviated.

The inference that the sister-in-law, might thus be substitute for the wife, as the brother-in-law is for the husband.

19. If this is the case; then, in the same manner, as on the death of the husband, the brother-in-law, is a substitute; on the death of the wife, the sister-in-law, would be the same, on account of her exact resemblance in point of consanguineal relation to the father-in-law, [viz. her own father.]

Obviated.

20. This objection if made, is inaccurate. The designation of 'wife' is not in consequence of 'consanguineal relation to the father-in-law,' but from being the lawfully wedded spouse of the husband. Now, the sister-in-law is not such: where such essential exists in younger wives, in that case, one [according to the order of age] may be the sustitute for the eldest. Accordingly, the chief of saints hath negatively declared this. " An other wife of equal class [with
" himself] existing, he should not cause a religious act to be
" performed [by one of inferior class]; amongst several
" wives, equal in class, except the eldest, no other officiates
" in a sacred rite."

Of the five subsidiary daughters, who bear relation by blood to one parent, MENU

21. Therefore, it is established by reasoning even, that these [the *kshetrajá*, and other secondary daughters], may be substitutes. Of these, from amongst the following five

subsidiary daughters, viz. the daughter of the wife, that of hidden origin, the damsel's daughter, and that of the twice-married woman, MENU himself has propounded the production of the daughter of the wife;—" on failure of issue [by the " husband] the desired offspring may be procreated either by " his brother or some other *sapin'd'a*, on the wife who has " been duly authorized."—It is meant by this, that on failure of issue of both sexes, as offspring male or female, is the object desired, [that begotten by a kinsman] is a substitute for either, as the case may be.

propounds the production of the *kshetrajá* description; as appears from.

Explanation of his text.

22. As to the other four subsidiary daughters, in question, there is no necessity for an express rule for their production: for their existence proceeds from the inclination of individuals.

An express rule for the rest unnecessary.

23. The names of these [subsidiary daughter], are only those adduced, (v. § 21) corresponding with those of the sons: for, the cause from which they proceed is the same even, in respect to both.

Their names correspond with those of the sons.

24. And, their being substitutes for the legitimate daughter, is established, from analogy even, from their originating partially from portions [of the husband and wife]; in the same manner as wild rice *(ni'vára')*, is shewn to be a substitute on defect of the cultivated rice, which ripens in the rains *(vri'hi)*. Now, such portions are partial, because, the connection being through portions of the wife only, relation through portions of the husband, is wanting.

These particular descriptions, are substitutes for daughters, by analogy.

25. Allowing however, that by force of analogy, the daughter of the wife, and other four secondary daughters, are substitutes for the legitimate daughter:—How are a daughter given, one purchased, a daughter made, one self-given, and a deserted daughter, (no analogy applying) substitutes?

Objection, that a daughter given, and the rest cannot be substitutes, as no analogy applies to them.

26. This objection is invalid.—To these descriptions of daughters also, analogy even, does extend: since, an exact resemblance exists through equality of tribe, and so forth, as intimated by the saint,—" this law is propounded by me in

Over-ruled; an argument of analogy existing, applicable to them.

"regard to sons *(tanayeshu)* equal by class;"—and this passage was before explained* in treating on the substitute for a son.

Objection, that the subsidiary daughters being equally from analogy, substitutes, the order for succession, as provided for in the case of sons, could not be applied.

27. But, admitting that the daughter of the wife, and other four daughters, from relation, as containing portions of the mother,—and the daughter, and the other four, from equality of class,—are substitutes; still, since there is no difference in their resemblance, how is the order [of succession], as provided for [in the case of sons], by this passage, ("on failure of the preceding, the next in order is heir, &c.†") to be applied?

Over-ruled.

28. This objection is wrong: we reply,—by the greater worthiness of each successively. This VISHNU declares,—"among these, the preceding successively is the more "worthy."—Now worthiness, is distinguished into what is temporal *(drishta)* and what is spiritual *(adrishta)*. That, which is temporal, proceeds from relationship, through consanguinity, and the like: that, which is spiritual, from being purified, and so forth. And the text in question, intends a restrictive rule: in the same manner as such texts as—"Should he not procure the '*soma*' creeper, let him even "admit '*putika*' plant, &c."

Reference, to the author's commentary on VISHNU.

29. Further particulars may be consulted, in the *Kesava-Vaijayanti*, my commentary on VISHNU.

Indication in scripture of a daughter given.

30. Instances indicating the substitute for a daughter, are found in the *purānas*—Amongst these, the recital to DASARAT'HA, by SUMANTRA, of the prophecy foretold by S'ANAT-KUMA'RA, in the *Bāla-kanda* of the *Rāmāyana*, is an indication of a daughter given.—"In the race of "ISHWA'KU', one very meritorious shall be born: by name, "the warrior DASARAT'HA: illustrious and constant in truth. "—Great friendship shall subsist between him and the

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* V. supra, sect. 11. § 23, &c.
† YA'JN'YAWALKYA, 2. 133.

"magnanimous king of *Anga;* and he shall possess a daugh-
"ter of exalted destiny, of the name of SA'NTA'. But the
"king of *Anga* (called LOMAPA'DA) will be destitute of
"issue.—That monarch shall intreat the king DASARAT'HA,
"thus:—'I am destitute of offspring; Oh! versed in
"morality, let this girl SA'NTA' of excessive beauty, with
"open heart be given me, for the sake of offspring.'—Then,
"that *Raja* DASARAT'HA deliberating in his mind shall give
"the girl SA'NTA', to the sovereign of *Anga.* That king,
"having taken the damsel, (his desires being fulfilled,) with
"gladness of heart, will quickly go to his capital.—That
"potentate shall bestow the damsel on RISHYA-SRINGA, &c."
There also is, this address of DASARAT'HA to LOMAPA'DA,
"Let your daughter SA'NTA,'Oh! warrior king, go with her
"husband to my city—an affair of importance has arisen."
There is likewise, the address of LOMAPA'DA, to RISHSYA
SRINGA;—"This king DASARAT'HA is my amiable beloved
"friend. For the sake of offspring for me, this beauti-
"ful girl was given by him to me, who demanded her:
"O *Brahmana,* SA'NTA' is most dear to me; as myself,
"Oh! sage, he, this king, is thy father-in-law."

Illustration.

31. In these quotations from the expressions,—"let be
"given"—"shall be given"—"having taken"—and, 'given'
—a rule for the gift, is manifest. So it being premised,
[that the king of *Anga* will be] destitute of issue, it
follows, from the conclusion of his prayer ("for the sake of
"offspring") that the daughter given, resembling the legiti-
mate daughter, is a substitute for issue.

Indication in scripture of a daughter purchased.

32. An indication of the daughter purchased, is found in
HEMA'DRI, from the *Skanda-purana.* "One even of a
"different family, having through gold, made the daughter
"of another, his own, is capable of bestowing her [in mar-
"riage], according to legal form."—Also in the *Linga-
purána*—"after having conferred with the parents, having
"made his own, a damsel, perfect, and free from every
"defect: by the gift of great wealth, having brought her

"[to his house]: having presented her with new clothes of "good quality: having adorned her with ornaments, let "him honor her with scented necklaces.—He is first well to "consider, causes, their respective families, constellations, "and so forth: he is to study their respective dispositions, "and after having liberally gratified both, she is to be given "by him to a *Brahmana* only, who is conversant in scrip- "ture, a practiser of devotion, one who hath notoriously "read the *Ve'das*, and a student of theology."

Illustration.

33. In these quotations, from the expressions—"having "through gold made his own"—"by the gift of wealth' "&c."—authority for the purchase, [of a daughter] is manifest.

Indication of a daughter made.

34. An indication of the daughter made, is found in the *Haribans'a**, where the offspring of SURA, is enumerated. [The author] having thus premised,—"Ten males were be- "gotten by SURA, on the chief queen, the daughter of B'HOJA, "viz.—first VASUDEVA the long-armed, surnamed A'NAKA- "DUNDAB'HI†, &c."—then continuing,—"Next to him DE- "VA-BHA'GA was born, then, DEVA-SRAVAH, then ANAVRISH- "TI, KANAVAKA, and VATSAVA'NA: after these, GRINJOMA, "SYA'MA, SAMI'KA, GANDU'SHA—and of him were five "daughters;"—and having thus enumerated the five— "PRITHU-KI'RTTI, PRIT'HA', and also SRUTA-DEVA, SRUTA- "SRAVA', and RAJA'D'HIDEVI', likewise. These five, were "mothers of warriors,"—subjoins—"KUNTI, made PRIT'H'A, "his daughter: PA'NDA' married her: on whom was pro- "created, by the god of justice, the king YUD'HISHTI'RA "well versed in morality."

Illustration.

35. In this quotation, since by the verb 'made,' the act of an agent even is shewn: the female, [the object,] is a daughter made [*kritrimá*].

* Or chapter of the *Mahá-bhárata*, on the lineage of kings.

† It is related that at the birth of VASUDEVA, the drums of INDRA, spontaneously played, whence the name A'NAKA-DUNDAB'HI, these words signify; in order, a small and large kettledrum.

Another indication of the daughter made.

36. Also in the *padma-purána*, in the part treating on the *B'hauma-vrata*, or fast in honor of the planet Mars. "Formerly, there was SUNANDIKA', a *Brahmana*, through-"ly read in the *Ve'das:* his wife SUNANDIKA' was barren; "but extremely anxious [for issue]. No offspring was "born to him: from continuing barren, [premature] old "age came on. Himself, having taken her [in adoption],— "SUS'I'LA' who was the child of another, beautiful in form, "and born in the family of a *Brahmana*, was educated by "him: and that *Brahmani'*, also cherished her in her "house, as her daughter. and she was given in marriage to "the *Brahmana*, SOMESWARA, who then, according to the "form declared in the *Ve'das*, married her, &c. &c."

Illustration.

37. Here the specification of—"himself having taken"— indicates an instance of a daughter made: and the construction—was educated by himself—is not accurate: for, as the agent to the verbs, 'taking' and 'educating,' is the same,—as shewn by the past participle 'having taken,'—it is established, that the act of educating is by himself.

A daughter self-given, indicated in other *Puránas:* one of the daughter deserted adduced.

38. An indication of the daughter self-given, must be searched for in the other *purânas:* One of the daughter deserted, occurs in this passage, from the first *parban* of the *Mahá-bhárata*, reciting the conversation between DUSHMANTA and S'AKUNTALA'. "'That hermit begot S'AKUN-"'TALA' on MENUKA'. MENUKA', having deserted that "'infant, born on the bank of the *Máliní* river, on the "'delightful table-land of *Himavat*, after having performed "'the necessary rites at that river, repaired thence quickly "'to the assembly of INDRA. The birds, having seen that "'infant sleeping in the forest, uninhabited by men, and "'abounding in lions and tigers, surrounded it on all sides,

37. *And the construction,—'was educated by himself.'—*] The original recites,—'*tena-anya-syasuta-jata-Sus'ílá. . . . . grihitwa'-poshita-swayam.*'—The author, wishes to shew that the extract quoted exhibits an instance of an adoptive daughter, of the description technically called,—"made by the man himself."—For this purpose, he construes '*swayam*' (himself) with the past participle '*grihitwá*' (having taken) : not directly with '*poshita*' (educated) ; which latter construction, is in fact less accurate, as the agent to '*poshitá*' (educated) must be the same, as that to the past participle '*grihitwá*'.

"'with view that, the voracious devourers of flesh might "'not hurt the child. The birds then guarded on all sides "'there, the daughter of MENUKA'; and I, (going to sip "'water) saw her sleeping, surrounded in the beautiful unin- "'habited forest, by birds. Having brought her thence, I "'adopted her as my daughter. The maker of the body, "'the bestower of life, and he, whose foot is eaten, these "'three in order, are declared to be fathers in holy ordi- "'nance. Since she was surrounded, in the desert forest, "'by birds, her name also was in consequence fixed by me "'S'AKUNTALA'*. Thus recognize, oh! *Brahmana*, my "'daughter S'AKUNTALA'"—Being asked, this, he declared "to the great saint, to be my birth. Do you, oh Lord of "men, regard me as the daughter of KANWA, I consider "KANWA as my father: I know not my real father."

Illustration.

39. Here, from the use of the expression—"having "deserted"—authority for the deserted or discarded daughter is obvious. Hence, it is easy to establish authority for each, by instances appropriate to each respectively. It is useless to enlarge.

And conclusion.

* Formed from '*S'akunta*' a bird; and the root '*la*, take, &c.

SECTION VIII.

On the mourning, and so forth, of, or for, the adopted son.

1. NEXT, uncleanness [on occasions of birth, and death] in respect to the adopted son, is determined. That is not reciprocal, in the family of the natural father, on account of the text of MENU. "A given son, must never claim the "family, and the estate of his natural father. The funeral "oblation follows the family and estate: but of him, who "has given away his son, the obsequies fail."

There is no reciprocity of uncleanness, in the case of the adopted son, in the family of the natural father, on account of a text of MENU.

2. The terms 'funeral oblation' and 'obsequies' in the text, are inclusive of every observance in honor of manes, uncleanness, and so forth; for, the exclusion of the family and estate, which are the cause of presenting the funeral oblation, and so forth, is mentioned: and it is a restrictive condition, that uncleanness, which is spiritual, precede the presenting the funeral oblation, and so forth, in honor of the dead.

In which the terms 'funeral oblation,' and 'obsequies,' denote uncleanness and every other observance.

3. And hence, the funeral oblation being barred, the exclusion of uncleanness is even implied; for, by well considering such passages, as the following, the concomitancy of the funeral oblation, and uncleanness appears.—"Whether one "of the same family, or one not belonging to the same family; "whether a male or female; whoever, on the first day, "presents the funeral cake, should complete the rites, till "the tenth: and so also, it is not well for those, who pre- "viously receive any thing from the performer of these "rites*."—"Whilst the nucleanness lasts, a libation of "water, and one funeral cake†."—Therefore, there is no reciprocal uncleanness, and the like, between the adopted son, and his natural father, and the rest.

Authorities, shewing the concomitancy of uncleanness, and the funeral oblation, cited.

Conclusion.

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* *Griphya-parisihta.* † VISHNU.

Any conclusion, from a passage cited, that uncleanness mutually obtains between the adopted son, and his natural father, and the rest, obviated.

4. As for the text,—"Impurity *(aghan)* arising from "seminal connection, also continues three days"*—that is over-ruled by this passage; "But of him who has given "away his son, the obsequies fail:" for, it applies to instances, other than that of the adopted son. Besides, since it appears, that family and alliance by oblation of food, are collectively the cause of, impurity, the libation of water, and so forth, should one of these essentials be wanting, impurity and the rest, occasioned (partly) by it, does not exist.

A text of SANK'HA and LIK'HITA confirmatory.

5. Accordingly SANK'HA and LIK'HITA. "The con- "nection as *sapin'd'a* from family, must be recognized, as "extending to the seventh degree: and the funeral cake, "and the gift of water, purity, and impurity, are consequent "to it."

On the death of the adopted, the uncleanness of the adopter, lasts three days as shewn by, VRIHASPATI.

6. On the death of the son given, and the rest, the uncleanness of the adoptive father, and others, endures for three nights. This VRIHASPATI declares:—"Wives, having "taken to other men, and children by the wife of another, "being dead: the best of the regenerate, having bathed, "are purified."—And this rule for uncleanness, applies to him only, to whom, the relation of wife or son, refers.

MA'RI'CHI propounds the impurity of the kinsmen of the father.

7. MA'RI'CHI separately propounds [the uncleanness] of *sapin'd'as* of the father, connected within the third degree. "On occasions of birth and death likewise, [the period of "impurity,] for the first and second [husbands], is three "nights: where the impurity of the father, endures three "nights, that of the *sapin'd'as* lasts one day."

Impurity from birth propounded.

8. Althouh, no impurity of the adopter, by acceptance of sons given and the rest, (who are already born,) as arising from their birth obtains: still, uncleanness is incurred, from the birth of their offspring.—But, on account of the birth of the son of the twice-married woman, in his own house, uncleanness on that occasion is fit.—Thus, is impurity from birth shewn.

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* YA'JNYAWALKYA.

9. This however regards sons of equal class only.—Accordingly the *Brahma-purána* ;—"Excepting the legitimate son, on the death and birth of the son of the wife, "and the rest, always in every tribe, the impurity of those "equal by class, endures three nights.—This is a settled "point."

Uncleanness, only takes place where there is equality of class, as shewn by a passage of the *Brahma-pura'na.*

10. 'Always'—that is,—every time subsequent to investiture of the characteristic thread.

Explanation of 'always' therein occurring.

11. [PRAJAPATI also.] "Wives having taken to another, "and children by the wife of another, [being dead :] those "of the same general family, are purified by ablution : after "three days at least, one versed in the divine truth."

A text confirmatory cited.

12. Although, [it may be alleged, that] on the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the [general] relation of *sapin'd'a,* and connection by identity of family, associated together, are wanting [in him] ; and no special rule in that respect, is at present found ; still, by the following passage of MA'RICHI, uncleanness for ten days is propounded, for the purpose, of the disciple's performing the necessary rites, in honor of his deceased '*Guru.*' "The disciple of a deceased '*Guru,*' "performing uninterruptedly for ten days, with food for "manes, the obsequies for a father, is purified."

The uncleanness of the disciple for ten days on the death of his '*Guru*' is propounded by MA'RI'CHI.

13. Here the term '*Guru*' represents the preceptor, and other superior ; and such venerable superiority, obtains in the individual in question [the adopter], on account of his performing the rite of investiture, and so forth.—Therefore, in case of the adopter having performed the initiatory rites of the adopted, the impurity of the latter endures, for ten days ; if this be not the case, for three nights only : on account of the text before cited.—(§ 9)

Whose term '*Guru*' is illustrative of the adopter.

Consequent conclusion.

14. So, on the death of a *sapin'd'a* of the adopter, related within the third degree, the uncleanness of the adopted son, is for one day : for, the text in question of MA'RI'CHI, recites, —"that of the *sapin'd'as* for one day."

His uncleanness for a *sapin'd'a* of the adopter.

For a distant kinsman.

15. On the death of one connected by an oblation of water, and one belonging to the same general family, ablution only, is necessary; on account of the text of PRAJAPATI, before cited (v. § ii.) "Wives having taken to another, and children by the wife of another, being dead, those of the same general family, are purified by ablution, &c."

SECTION IX.

On the funeral obsequies to be performed by the adopted son.

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1. NEXT the funeral rites, performed by the adopted son, are described. On this subject, JA'TU'KARN'A says;— "Annually let the son of the wife, and legitimate son, "perform [obsequies] according to the *párvana* form: the "other ten sons, should perform the rite dedicated to a single "ancestor*."

JA'TU'KARNA cited, on the subject of the obsequies, to be performed by the adopted son.

2. 'Annually'—from this general mode of expression, although, the monthly (*amavásya*) and other periodical funeral repasts† be inferrible; that only on the anniversary of the day of death is meant. For, the terms—"the anniversary "of the day of death"—are expressly used in this text of PARA'S'ARA. "[A funeral repast,] by the legitimate son, "for a father, who has departed this life, on all occasions is in "honor of three ancestors, that, by those of a different gene- "ral family *(aneka-gotra)*, is the rite consecrated to a "single person, on the anniversary of the day of death."

The term 'annually' used by him, means the funeral repast on the anniversary of the day of death, as appears from a text of PARA'SA'RA.

3. The expression—'those of a different general family' *(aneka-gotra)*—in this text does not intend the maternal grandfather, and the rest: for, its construction as intending a secondary son, as contrasted with the legitimate son, is proper,—from its proximity in the same sentence with the terms 'father' and 'legitimate son:' for, otherwise [no contradistinction between the legitimate and secondary sons being

The term '*aneka-gotra*,' used by whom, refers to the secondary sons, and not to kinsmen on the mother's side: for whom a single rite is not restricted.

3. *Nor is there any restrictive rule.*] If it is contended, that the term "*aneka-gotra*" (which occurs in PARA'S'ARA's text in the genitive case plural), intends the maternal kinsmen, this expression must be construed as designating the object and not the agent of the ceremony—Accordingly the translation will be "that, for those, &c." and not,—"that, by those, &c."

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* For explanation of the rites referred to v. supra, sect. iv. § 72

† V. note to the same.

meant], if the meaning intended, be conveyed by merely declaring that, [a funeral repast,] in honor of three ancestors, must be performed by the son, on the anniversary of the day of the father's death, it would follow, that the specification of the term legitimate were impertinent.—Nor is there any restrictive rule, that on the anniversary of the day of death, merely the rite consecrated to a single person, takes place, for the maternal grandfather, and the rest.

As appears from MA'RI'CHI.

4. Accordingly MA'RI'CHI says.—"Commencing with the "father of the mother, three are considered maternal grand- "sires.—Let the sons of daughters perform for these, funeral "oblations, as for the father."

Whose text, expressly provides for a *párvana* rite, in honor of maternal grandsires.

5. By ordaining, in this text, funeral oblations in honor of three maternal grandsires, the *pa'rvana,* or double rite only, is inferred.—From the expression—"as for the father,"—an option of performing, for the maternal grandsires also, obsequies in the form of *pa'rvana,* or *ekodishta',* is not obtained; for, the sentence in question, is meant to enjoin, the absolute necessity for the performance of obsequies, in honor of the maternal grand father.

An opponent's argument anticipated.

6. Besides, why should not also, the term 'yearly' in the following text, like the word 'annually' [in JA'TU'KARN'A's text (§ 1.)—supposing this word, there occurring, to have such import], intend the *magha,* and other periodical funeral repasts. "Excepting the first sixteen funeral repasts, with "rites performed with fire included,—and the yearly obse- "quies,—at the remaining funeral repasts, let six cakes be "presented: this is settled rule."

And refuted.

7. Should it be objected, that this would be an intended consequence; it is wrong, for it would follow, that, the son given, and the rest, at the different periodical funeral repasts, would perform an *ekodishtá* rite. Now this is not meant by any one. For, if the term comprehend any funeral repast in general; other funeral repasts, (as must be understood from the term 'remaining') not existing, any exception would be impossible.

8. Therefore, this is the accurate exposition of the law,—that, on the anniversary of the day of death, in honor of the father and mother, a *párvana* funeral repast only should be performed, by the legitimate son: by the others (the son given and the rest), merely one consecrated to a single ancestor. To enlarge would be useless.

Conclusion.

SECTION X.

On the succession of the adopted son.

VAS'ISHT''HA propounds the succession of the adopted son.

1. The inheritance of the adopted son is now propounded.—On that subject, VAS'ISHT''HA says :—"When a son "has been adopted, if a legitimate son, be afterwards born, "the given son shares a fourth part."—On the default of him, he is intitled to the whole.

Conclusion.

2. Thus is the *Dattaka-Mi'mánsá*, compiled by the fortunate NANDA PAN'D'ITA, the son of the fortunate RA'MA PAN'D'ITA, lord of virtue, cômpleted.

1. *Shares a fourth part.*] "A quarter-share, not an entire-share" v. supra, sect. v. § 40.

FINIS.

DATTAKA-CHANDRIKÁ.

A TREATISE ON ADOPTION,

BY

DEVAṆ́DA-BHAṬṬA.

SECTION I.

Reason of adoption—Who may adopt—What description of son—How to be selected—Preference to be given to a brother's son—The gift by whom to be made.

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1. By the favor of CHANDRIKA'LA*, the *Dattaka-Chandriká*, the dispeller of the doubt, arising from what was not propounded in the *Chandriká* †, is compiled.

Title of the work.

2. Every rule relative to the adopted son, ordained for the *kali* age, which was not discussed by me, in the *Chandriká*, in treating on the eighteen topics of litigation, propounded in the texts of MENU, and other saints, is fully and specially expounded here.

Its subject, adoption.

3. On this subject MENU says: "A son of any description must be anxiously adopted, by a man destitute of "male issue, for the sake of the funeral cake, water, and "solemn rites; and for the celebrity of his name."—ATRI.

On which are cited texts of MENU.

ATRI.

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* S'IVA. † *Smriti-Chandriká*, a celebrated treatise on judicature.

B

"By a man destitute of male issue only, must the substitute "for a son of some one description, always be anxiously "adopted: for the sake of the funeral cake, water, and "solemn rites."

Explanation of "destitute of male issue."

4. "By a man destitute of male issue :" that is,—by one to whom, no son may have been born : or whose son may have died ; for, a text of S'AUNAKA, expresses : "One destitute "of a son, or one whose son may have died, having fasted "for male issue."

Conclusion, therefrom.

5. Therefore, although by the production of a son, the exemption from debt, deduced from the text of MENU subjoined, may have taken place ; still on the death of such son, for the sake of funeral rites, the affiliation of another son, is indispensible. "By the eldest, at the moment of birth, a "man becomes father of male issue, and absolved also from "debt to his progenitors. He therefore is entitled to take "the estate*."

'Male issue' is inclusive of grandson and great-grandson.

6. The term 'male issue,' *(putra)* here used, is illustrative of the grandson, and great-grandson ; for these equally present oblations of food, and preserve the line. Otherwise, it would follow that the adoption of a son, by one whose son had died, notwithstanding the existence of a grandson, were without reason. It therefore results, that, one only destitute of a grandson, and great-grandson, may adopt.

Nothing definite is meant, by the mention of the adopting party in the singular number, and masculine gender.

7. It must not be argued, that, from the qualities of being male, and singular, being attributed to the adopting party, by the expression "a man destitute of male issue," some thing definite is meant : therefore, the same person must not be adopted, by two individuals, nor any son by women. For, the adoption of the *Dwyámushyáyana*, or son of two fathers by two persons, will be presently declared ; [and] women with the sanction of their husbands are competent to

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* MENU, 9. 106.

adopt: as VAS'ISHT'HA shews: "Let not a woman either give or receive a son in adoption: unless with the assent of "her husband."

8. "A substitute." Now such is of eleven descriptions, the son of the wife, and the rest. Thus MENU [ordains]: "Sages declare, these eleven sons (the son of the wife, and "the rest) as specified to be substitutes for the real legiti-"mate son, for the sake of preventing a failure of obse-"quies." VRIHASPATI also. "Of the thirteen sons, who "have been enumerated, by MENU, in their order, the legi-"timate son, and appointed daughter, are the cause of "lineage. As oil is substituted by the virtuous for liquid "butter: so are, eleven sons by adoption, substituted for "the legitimate son, and appointed daughter."

There are eleven descriptions of substitutes for a son, as is shewn by MENU.

VRIHASPATI.

9. Of these, however, in the present age, all are not recognized. For, a text recites;—"Sons of many descrip-"tions, who were made by ancient saints, cannot now be "adopted by men,—by reason of their deficiency of power*;" and against those, other than the son given, being substitutes, there is a prohibition in a passage of law, wherein, after having been premised,—"The adoption, as sons of those "other than the legitimate son, and son given,"—it is subjoined,—"These rules, sages pronounce to be avoided in the *kali* age."

The given son in the present age, however, only can be adopted.

10. The rules relative to the adopted son, are now propounded. On this subject S'AUNAKA ordains,—"The "adoption of a son, by any *Brahmana*, must be made from "amongst *sapin'd'as*, or kinsmen, connected by an oblation "of food: or on failure of these, an '*asapin'd'a*' or one not "so connected; otherwise let him not adopt."

Rules relative to the selection of the adopted son, laid down by S'AUNAKA.

9. *In a passage of law.*] This passage, which is frequently cited, is attributed to the *A'ditya-purána*, and in its complete state is thus—"The adop-"tion, as sons of those, other than the legitimate son and son given;—the "procreation of issue by a brother-in-law; —the assuming the state of an an-"choret;—these rules, sages pronounce to be avoided in the *kali* age."

* VRIHASPATI.

Who intimates that he may be of the same, or a different general family.

11. Here, since it is mentioned generally, from amongst '*sapin'd'as,*' it is meant, from such, both of the same, or a different general family; and accordingly, on default of a '*sapin'd'a*' kinsman, one belonging to the same general family, and failing this latter, a person even of a different general family, are to be adopted. S'A'KALA declares this. "Let one of a regenerate tribe, destitute of male issue, on "that account, adopt as a son, the offspring of a '*sapin'd'a*' "relation particularly: or also, next to him, one born in the "same general family. If such exist not, let him adopt "one born in another family: except a daughter's son, "and a sister's son, and the son of the mother's sister."

But a '*sapin'd'a*' of the same general family, is more eligible.

A passage from S'A'KALA, is confirmatory.

Close of the passage of S'A'KALA shews, that, the adopted son must be of the same class: as is declared by MENU.

12. "Otherwise, let him not adopt." By this, a given son being,—other than a *Brahmana,*—a *Kshatriya,* and so forth—in short, of a different class, is excluded. This MENU declares. "He is called a son given, whom his fa- "ther, or mother, affectionately give as a son, being alike, "and in a time of distress, confirming the gift with water."

Term used by MENU, explained.

13. "In a time of distress."] The adopter being destitute of male issue—"Alike"] belonging to the same class.

A conflicting gloss, by MED'HA'TIT'HI, reconciled.

14. "Alike, not by tribe, but by qualities, suitable to the "family. Accordingly a *Kshatriya,* or a person of any "other inferior class, may be the given son of a *Brahmana.*" As for this interpretation by MED'HA'TIT'HI; it is thus reconciled. Where, there may be no real legitimate son, although as being inferior in class, the *Kshatriya,* and the rest, are not entitled to present the oblation of food, and water; still, their filial relation may be legally established, by reason of their being beneficial, in perpetuating the name, and the like; but, as they are beneficial in a small degree, they only receive maintenance.

KA'TYA'YANA confirms.

15. KA'TYA'YANA declares this. "If they be of a dif- "ferent class, they are entitled to food and raiment only." —S'AUNAKA also. "If one of a different class, should "however, in any case, have been adopted as a son, he "should not make him the participator of a share: this is

S'AUNAKA also.

"the doctrine of S'AUNAKA."—By YA'JN'YAWALKYA also, "it is declared, that, one of the same class presents the "funeral cake, and participates in a share: but the filial "relation, of one of a different class, is not denied: and "YA'SKA, explicitly declares this: "A person of the same "class, must be adopted as a son. Such a son performs "the oblations, and takes the estate; on default of him, "one different in class, who is regarded, merely as prolong-"ing the line. He receives food and raiment only, from "the person succeeding to the estate."

Y'AJNYAWALKYA.

YA'SKA.

16. In fact, the construction of the word, 'alike' *(sadris'a)* in MENU's text (§ 12), as signifying—of the same class—is only proper; for, elsewhere, the participating, as an heir, of such adopted son, is shewn: and the participating in the inheritance, of one unequal in class, is impossible.

Conclusion.

17. "Except a daughter's son, and a sister's son." This prohibition, against the daughter's son and sister's son, refers to those, other than *Sudras*. Accordingly S'AUNAKA. "Of *Kshatriyas* in their own class positively, and [on "default of a *sapin'd'a* kinsman] even in the general family, "following the same primitive spiritual guide *(Guru)*. Of "*Vaisyas*, from amongst those of the *Vaisya* class: of "*Sudras*, from amongst those of the *Sudra* class: of all, "and the tribes likewise, in [their own] classes only: and "not otherwise. But a daughter's son, and a sister's son, "are affiliated by *Sudras*. For the three superior tribes, "a sister's son, is no where [mentioned as] a son."

The exception from adoption of the sons of a sister, and a daughter in § 22, refers to the superior tribes, as is shewn by S'AUNAKA.

18. "Even in the general family, following the same "primitive spiritual guide." Since there are no distinct and peculiar general families of [primitive] *Kshatriyas*, the general family following the same primitive spiritual guide is specified; for it is declared, in the passage subjoined, that, one of the tribe in question, participates in such general family. "He specifies, the general families of *Kshatriyas*,

"In the general family, following &c.;" why introduced by S'AUNAKA.

"and *Vaisyas*, as distinguished by following the same "primitive spiritual guide*."

Import of the phrase, "in [their own] classes only, &c."

19. "In [their own] classes only, not otherwise." This is a restriction, intended to forbid the adoption of one of a different tribe; otherwise the text of KA'TYA'YANA, before cited, would be contradicted.

A brother's son, if capable of being adopted, must be first selected, in preference, to other kinsmen: as declared by MENU.

VRIHASPATI.

20. In respect however, to this subject[it is to be observed, that,] where a brother's son may exist, amongst near kinsmen, he only is to be adopted. This MENU ordains. "If one among brothers of the whole blood, be possessed of "male issue, MENU pronounces that, they all are fathers of "the same, by means of that son." VRIHASPATI [also.] "If there are several brothers, the sons of one man, by the "same mother, on a son being born to one even of them, all "of them are declared to be fathers of male issue." Under these two texts, if a brother's son is in any manner capable of being a substitute, it is inferred, that another is not to be adopted.

Argument, that, though unadopted, a nephew, would bear filial relation to his uncle.

21. "Offspring must be produced: this precept is peremp-"tory: in some manner, or another, it must be complied "with†." Since the representation of the filial relation, here [contemplated], obtains in the brother's son; the effects thereof, viz. the oblation of the funeral cake, libation of water and the like, and exemption from exclusion from heaven, would be accomplished [by his existence]: hence, there can be no occasion, to proceed in the re-attainment of the same; consequently a brother's son, though unadopted, is filially related; in conformity with this text of VRIHAT PARA'S'ARA. "Let the nephew of a paternal uncle, desti-"tute of male issue, be his son; he only should perform his "obsequies, of the funeral repast, and of oblations of food,

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* V. notes to sect. II. § 76. and 79. D. M.

† This passage is assumed, to be a quotation. It is almost identical, with a portion, of a passage from MED'HATIT'HI, cited in sect. I. § 60. D. M.

"and of water." Hence, a brother's son existing, no affiliation [of him, or another,] as a son given, and so forth, takes place."

Refuted.

22. This is not to be argued: for, although, by reason of the nephew's possessing the representation of the filial relation, he may be the means of procuring exemption, from exclusion from heaven, and so forth: still,—as the celebration of name, and the due perpetuation of lineage, would not be attained,—for the sake of the same, the constituting him [an adopted son,] is indispensible. Besides, the two texts, in question, do not prohibit, where a brother's son may exist, the constituting [him, or another,] a son given, and so forth: but indicate, [as inherent in a nephew,] the virtue of a son, consisting in the capacity, to perform the funeral repast, and so forth.—For, otherwise a contradiction of the rule for the production of a *kshetraja* son, notwithstanding a brother's son may exist, would follow; and since by the text subjoined, the resemblance of a son's son, obtains in a daughter's son, according to the reasoning recited, the non-adoption of a son given, and the rest, where a daughter's son also might exist, would result. "By that male child, "whom a daughter, whether formally appointed, or not, "shall produce, from a husband of an equal class, the "maternal grandfather, becomes the grandsire of a son's "son: let that son give the funeral oblaton, and possess "the inheritance*."

Argument of the opponent, that then by analogy, the son of a rival wife would not

23. But, if where even a brother's son may exist, the constituting [him, or another,] a son given, and so forth, be legal; then, though in the texts subjoined, the resemblance

22. *Besides, the two texts in question do not prohibit,&c.*] If the texts of MENU, and VRIHASPATI, cited in § 19, were prohibitory of the affiliation of an adopted son, where a nephew existed, it would be infferrible, that such nephew, without adoption bore filial relation to his uncle.—The author does not mean, to imply, that, the nephew has not a preferable right to be adopted, supposing his affiliation, not barred by any legal impediment.

* MENU 9. 136.

bear filial relation to his childless stepmother, without adoption.

of the virtue of a son, is shewn to obtain in the son of a rival wife, where even such son existed, the affiliation of a son given, and so forth, by the step-mother might take place.— VRIHASPATI.—"The same rule is also ordained, in respect, "to many wives, of the same person." MENU. "If, among "all the wives, of the same husband, one bring forth a male "child, MENU has declared them all, by means of that son, "to be mothers of male issue."

*Controverted.

24. Should this be objected, it is wrong. In the same manner, as where, the curd,—which is the object contemplated by the person, proceeding to produce the grumous substance, alluded to in the passage of the *Ve'das* subjoined, —is wanting, it is that substance, which causes the individual to proceed therein; and not the whey, or serous part [incidentally produced]; for that, not being the object, is of no use.—"He mixes coagulated milk *(dad'hi),* in boiled "milk; that is a curd, of two milk whey *(ámikshá),* —an "oblation, to the *Vaiswadeva* set of divinities, and whey for "horses."—Or,—in the same manner, as on the anniversary of the decease of a father, [who died, during the first half of *A'swina* denominated *pitri-paksha*] the ceremonials of a *párvana* rite, having been completed in honor of the father and other two paternal ancestors in ascent, above him,—a *párvana* rite is not recommenced, on account of the funeral

24. *In the same manner as where the curd, &c. &c.*] Reference, is here made, to the 9th topic, of the first Chapter, 4th Book of the *Mímánsa* of JAIMINI. This is detailed, in a note to § 24 sect. VI D. M.—By mixing coagulated, in boiled milk, the curd denominated '*ámikshá,*' and whey, are produced: where on the occasion of any sacrament, such curd is wanting, that is the object intended to be produced, and causing the act of admixture; not the whey, which is incidentally produced. In the same manner, the object, and motive of any adoption by the wife, (which must be sanctioned by the husband,) are to create male issue, to her husband, destitute of the same, and not to herself; though the filial relation, of the adopted to her, is incidentally produced: consequently, where the husband has male issue, as the primary object of the act, does not exist, the wife cannot adopt.

Or,—in the same manner, as on the anniversary of the decease, of a father, &c. &c. &c.] The nature of a *párvana* rite here alluded to is explained, in a note, to § 72. section IV. D M. During the first half of the month *A'swina,* (denominated in consequence, *pitri-paksha,*) *párvana* rites, are celebrated; whereat, the same solemnities, observed in honor of paternal ancestors, are observed in honor of maternal.—But, it is ordained, that where the father may have died, during this fortnight, on the anniversary of the day of his

repast, in honor of the maternal grandfather, and other two male ancestors [on the mother's side] ; for, the commencement of the same, depends on the funeral repast in honor of the paternal ancestors, [which, in this instance, would have been already completed :]—So also, in the case in question, the affiliation of a son, by a woman proceeding legally, with the sanction of her husband, to constitute for him, male issue, only takes place, where, no son of that person, may exist. But, if he have any, although she may be destitute of the same, such adoption, does not obtain ; for, to proceed therein, would be unproductive of the object.

Objection obviated.

25. In that case, she would not be exempted, from exclusion from heaven. In anticipation of this objection, the two texts of MENU, and VRIHASPATI, by propounding the existence of filial relation, in the son of a rival wife, [to his step-mother,] provide for her exemption, from exclusion from heaven, and the performance for her funeral obsequies ; for, except the offspring of her husband, she can have no other.

General conclusion, that, a son of a rival wife, unadopted, is filially related

26. Since, [a wife] can have no other offspring, but the issue of her husband, the son in question even, preserves her lineage. Therefore, where, the son of a rival wife exists ;

death, instead of the usual *eko-dishṭ'a*, or rite dedicated, to him alone, the same ceremonials of a *párvana* rite shall be performed, as wouuld have been celebrated, in honor of the father, and his two ancestors,—had the anniversary of his decease, not fallen within this fortnight : but a *pàrvana* rite shall not be commenced, for the sake of the solemnities, which, on this supposition, would have been observed in honor, of the three maternal ancestors : for, the commencement of these, is held to be subordinate to, and to depend on, the same solemnities in honor of the paternal ancestors, which would have already been especially performed. Or, in other words ; the main object of performing, a real *párvana* rite, is the celebration of solemnities, in honor of the paternal ancestors : in the case propounded these would have already been performed : therefore, the main object, being wanting, a *pa'rvana* rite is not commenced, on account of the solemnities, which, (had a real *pa'rvana* rite taken place,) would have been observed, in honor of the maternal ancestors. In the same manner, the main object, of any adoption by a wife, is to create male issue, to her husband, having none ; but, where he may have such issue, although she may have no son, she cannot adopt ; for, the primary object and motive, would be wanting —The translator has deemed it incumbent on him, to attempt illustrations, of the analogy, alleged by the author, to exist between the two cases cited, and the one proposed : this has been done in this, and the preceding note. The analogy, however, is far from being obvious, from the terms of the text.

tohisstep-mother: but not so, a nephew to his uncle.

as the whole benefit even of a son, is attained, no affiliation, [by the step-mother, of him or another,] as a son given, and so forth, takes place.—But as the capacity of prolonging lineage, does not obtain in a brother's son, although such son may exist; [he, or if any impediment exist, another,] must be affiliated, as a son given, and so forth: there is in this respect, a material difference.

Objection, that the gift in adoption, of an only son, being forbidden, the adoption of a nephew, who is an only son, could not take place.

27. But if, a brother's son existing, the affiliation of him only, is indispensible; where, there may be only one brother's son, in that case, the adoption cannot take place; on account of the text of VAS'ISHT HA, which recites,—"An only son, "let no man give, or accept.—For, he is destined to prolong "the line of his ancestors."

Over-ruled, as the prohibition does not refer to the son of two fathers.

28. Should this be alleged, it is not accurate. For, the text in question, is applicable to a case, other than that of the *Dwyámushyáyana*, or son of two fathers.—In the case of the *Dwya'mushya'yana*, the extinction of lineage, contemplated in the clause of the text, containing the reason, would not take place; and an indication is found in the *pura'nas*, as to the affiliation, by VETA'LA, of the son of [his brother] B'HAIRAVA. Thus—"Accordingly he, (B'HAIRAVA) at "some time copulated with URVASI, a celestial nymph, and "procreated on her, a son named SUVE'SA. VETA'LA "also, affiliated him, as his son; and in consequence by "means of this son, both attained heavenly salvation.*"

A man only, having several sons, may give one, as is declared, by S'AUNAKA.

29. In answer to the question—by whom is a son is to be given? S'AUNAKA declares: "By no man, having an only "son, is the gift of a son to be ever made. By a man "having several sons, such gift is to be anxiously made."

Whose expression 'several' bars, the gift, by one having only two sons.

30. The author, apprehending an extinction of lineage, in case of the gift of a son, by one, even having two sons, says; "by one having several sons."

With the sanction of her husband, a woman

31. But, by a woman, the gift may be made, with her husband's sanction, if he be alive; or even without it, if he

* V. D. M. Sect. ii. § 45, et notes.

be dead, have emigrated, or entered a religious order.— Accordingly, VAS'ISHT'HA. "Let not a woman, either "give, or receive a son, unless with the assent of her "husband."

may give her son, without if he be dead, &c.
VAS ISHT'HA.

32. Now, if there be no prohibition even, there is assent: on account of the maxim; "The intention of an other, not "prohibited, is sanctioned."—YA'JN'YAWALKYA suggests, the independency of the woman. "He, whom his father, "or mother, gives, is a son given."—Also, in another place; "deserted by his father and mother or either, of them."

This assent of the husband, is implied by his silence, and the independance of the woman is indeed, suggested by.
YA'JN'YAWA'LKYA.

SECTION II.

The form for adoption—The most eligible period for selection—Rules under certain cirumstances—The adopted son, may be son of two fathers.

The form for adoption, S'AUNAKA.

1. Next S'AUNAKA propounds, the form for the adoption, of a son. "I, S'AUNAKA, now declare, the best adoption: "One having no male issue, or whose male issue has died, "having fasted for a son;"—

Explanation.

2. Adoption.] The form for adoption—Having fasted.] Having observed a fast on the day preceding the adoption.—VRIDD'HA GAUTAMA has,—"The impotent man, or also "one, whose offspring has died."

S'AUNAKA continued.

3. "Having given two pieces of cloth, a pair of ear-rings, "a turban, a ring for the forefinger, to a priest religiously "disposed, a follower of VISHNU, and thoroughly read in "the *Ve'das*. Having venerated the king, and virtuous "*Brahmanas* by a *mad'huparkka* (or prepared food, con-"sisting of honey, liquid butter, and curds)."

Explanation.

4. If the king be at a distance, [he should thus venerate] the chief of the village; for, a text recites: "having invited "all kinsmen, and the chief of the village also*." *Brahmanas.*] The plurality, meant by this word, is restricted to

4. *The argument exemplified by the instance of the white partridges.*] Allusion is here made to the 8th topic of the 1st chapter *(pa'da)* of the 11th Book *(ad'hya'ya)* of the *Mima'nsa* of JA'IMINI A passage in the *Ve'das*, to this effect, occurs. "On the occasion of the sacrifice of a horse, he should kill white partriges, for BASANTA (the god of spring)." In the part of the *Mima'nsa'* mentioned, it is proposed, as a subject for disquisition, whether, by the term 'partridges' in the plural, any indefinite number exceeding two, is meant, or three only—The opponent affirms, that any indefinite number, is meant; since plurality, is common to every number, exceeding two. The supporter of the correct opinion. however, alleges:—1st. That, the ordinance of law in question, s fulfilled by three.—2ndly The number three, must necessarily be included, in every plural number; but four, or other superior number, is not included in three —3rdly. The number three is the first in order of all plural numbers.—4thly The selection of that number, is more

* GAUTAMA.

three, on account of the argument, exemplified in the instance of the white partridges.—The venerating *Brahmanas*, is with a view to their asking [the child in adoption.]

S'AUNAKA continued.

5. "Both a bunch of sixty four stems, entirely of the "*kus'a* grass, and fuel of the *palása* tree,—also having "collected these articles: having earnestly invited kinsmen "and relations: having entertained the kinsmen with food, "and especially, *Brahmanas:* having performed the rites, "commencing with that of placing the consecrated fire, "and ending with that of purifying the liquid butter; "having advanced before the giver, let him cause to be "asked thus; 'give the boy.'—The giver being capable of "the gift, [should give] to him, with recitation of the five "prayers, the initial words of the first of which, are *ye-* "*yajn'yena, &c.*"

Explanation.

6. 'Should give' is understood—'kinsmen'] the kinsmen of the father and mother. 'Relations'] *sapin'd'as*. The inviting these, is for the sake of witnessing.—Having entertained invited kinsmen, and *Brahmanns* previously appointed, and (on account of the conjunction 'and') invited relations.—This is the meaning.

S'AUNAKA continued.

7. The same author continues—"Having taken him by "both hands, with the recitation of the prayer, commenc- "ing,—"*Devasya-twa*, &c.;" having inaudibly repeated, "the mystical invocation,—'*angad-ange, &c.*;' having kissed "the forehead of the child; having adorned with clothes, "and so forth, the boy bearing the reflection of a son."

Commentary.

8. 'Reflection of a son.'—The resemblance of a son,—or in other words,—the capability to have been begotten, by the adopter, through appointment, and so forth.

Text continued.

9. The text continues—"Accompanied with dancing, "songs, and benedictory words, having seated him, in the

convenient.—5thly. The intent of the law, being accomplished by three, in destroying more than that number, an offence would be incurred.—Hence, he argues, that three only, are meant by the plural term, used in the ordinance cited.

"middle of the house; having according to ordinance, "offered a burnt-offering of milk and curds, (to each "incantation,) with recitation of the mystical invocation "'*yas-twá-hrida*'—the portion of the *Rik Ve'da*, commencing, '*tubhyamagne*,'—and the five prayers, of which the "initial words of the first, are, '*Somo'dadat*.'"

VRIDD'HA GAUTAMA.

10. VRIDD'HA GAUTAMA—"Let him then cause, to be "offered, as burnt offerings, an hundred oblations of milk, "with liquid butter, contemplating in his mind, as the "object, the lord of created beings, with recitation of the "prayer,—'*prajá-pate-na-twa-detám*.'"

VAS'ISHT'HA.

11. VAS'ISHT'HA—"A person being about to adopt a "son, should take an unremote kinsman, or the near relation of a kinsman; having convened his kinsmen, and "announced his intention to the king, and having offered, "a burnt-offering, with recitation of the prayers denominated '*Vyáhriti*,' in the middle of his dwelling. But, "if a doubt arise, let him set apart like a *Sudra*, one "whose kindred are remote. For it is declared, in the "*Védas*; 'many are saved by one.' When a son has been "adopted, if a legitimate son be afterwards born, the given "son shares, a fourth part."

Commentary.

12. 'Dwelling'] house—'A doubt.'] If from the great difference of the country, and language of one, whose kinsmen are remote, a doubt arise, as to his lineage, disposition, and so forth; this being the case, till the ascertainment of these particulars, let him not initiate such person.—On this point, a reason is assigned,—"many are saved, &c." 'Many'] The father, and other ancestors.

Form must be observed.

13. One of these forms is indispensible.

Text of S'AUNAKA continued.

14. In continuation S'AUNAKA says, "Let the best of the "regenerate, to the extent of his ability, bestow a gratuity, "on the officiating priest; a king, half even of his dominion; "next in order, a *Vaisya*, three hundred pieces; a *Sudra*, "the whole even of his property: if indigent, to the extent "of his means."

Commentary.

15. 'Half his dominion.'] The produce, for one year, of half his dominion; for, a text of VRIDD'HA GAUTAMA, recites; "Let him proffer, the profits arising from half his "dominion, received in one year."—According as he may be in a superior, middling or inferior condition, [let a *Vaisya* give] three hundred pieces of gold, silver, or copper, respectively: on account of the text of VRIDD'HA GAUTAMA. "Let him proffer, three hundred pieces in gold, or in silver, "or in copper, according as his condition, may be superior, or otherwise." 'His whole property'] that is, the acquisition by hire, for one year.

BAUD'HA'YANA propounds a special rule.

16. BAUD'HA'YANA propounds, a special rule for the followers of the *Tittiri Ve'da*.—"We are about to explain, "the mode for the adoption of a son. One about to adopt, "produces two pieces of cloth, a pair of ear-rings, a ring, "and a priest thoroughly read in the *Ve'das*, a bunch of "sixty-four stems of the *kus'a* grass, and fuel of the "'*purna*' tree*. Then, having invited, kinsmen, into "the middle of the dwelling; and having made a repre-"sentation to the king: having sat down by the direction "of a *Brahmana*, in the assembly: having caused to be "exclaimed, Auspicious day! benediction! prosperity!: "having performed rites, commencing with the recitation of "the prayer—'*yad-deva'ya-jana*,'—down to the placing the "vessels for water: having advanced before the giver, let "him thus beg; 'Give me this son'—The other replies, "'I give'—He receives the child, [and says;] 'I receive "thee for the sake of religious duty: I adopt thee for off-"spring'—Then having adorned him with the clothes, the "ear-ring, and ring: having performed the investiture, and "other ceremonials down to the kindling a flame of fire; "having dressed the oblations, he offers a burnt-offering, "after having recited the incantation in the first chapter of

* Butea Frondosa.

"the [*Yajur*] *Ve'da* commencing,—'*yas-twa'-hrida'-ki'rina'-*
"*manym'ana'*—with recitation of the sacrificial prayer,—
"'*yasyai'vam-sukrite-játa-v'eda'* &c.'—he offers a burnt-
"offering. Next having performed the burnt sacraments,
"where the prayers denominated *vyáhriti* are recited: and
"that designated '*swisht'ikrit'* with other ceremonials, be-
"ing completed, down to the bestowing an excellent cow, he
"presents the fee [saying; 'yours, are] these two clothes, the
"ear-rings, and the ring likewise.' But subsequently, if a
"real legitimate son is born, he[the adopted son] succeeds
"to a fourth share—so says BAUD'HA'YANA."

The right of one adopted, without form, will be declared in the sequel.

17. In case, no form as propounded, should be observed, it will be declared, that the adopted son is entitled to assets, sufficient for his marriage*.

MENU propounds, that the relation, of the given son, to the family of his natural father, ceases.

18. On the subject [of adoption,] MENU says, "A "given son, must never claim, the family, and estate of his "natural father. The funeral cake follows, the family and "estate: but of him, who has given away his son, the "obsequies fail."

His text explained.

19. It is declared, by this, that, through the extinction of his filial relation from gift alone, the property of the son given, in the estate of the giver, ceases; and his relation to the family of that person, is annulled.

The initiatory rites unperformed, at the time of adoption, are to be completed by the adopter; but not those performed.

20. And accordingly, since extinction of relation, to the family [of the natural father,] and so forth, is shewn, and as a text recites,—" let the father initiate his own sons,—"the initiatory rites even, of the adopted, which are yet to be completed, subsequent to adoption, are to be performed by the adopter; but those, already performed by the natural father, are not to be cancelled. For, any argument, in respect to the renewal of these, is wanting; since, the removal of the

20. *But those, already performed......are not to be cancelled, &c.*] This has reference to the principal adoption, taking place within the primary season, prescribed for the performance of the rite of investiture, which, in the case of a *Brahmana*, is ordinarily the eighth year. *v. infra*, § 23, 27, 30, 32.

* V. infra, sect. vi. § 3.

taint of the seed, and so forth, and the acquisition of priesthood, as suggested, in the following texts, have already taken place. "Thus, the sin produced by the seed, and "womb, acquires expiation, &c." "As a picture is produc- "ed gradually, by many lines, priesthood in the same "manner proceeds, by the observance of form."

21. Otherwise, it would follow from the text subjoined, that he would have to perform also, the rites of *Punsavana* and *Símantonnayana**. "Let the father himself perform "the eight initiatory rites, (or on his default some other,) in "their order." Now, this would be improper; for, it would not be consistent, with approved practice: besides, as his authority, to perform initiatory rites, is from his relation of father, subsequent only to adoption, the incompetency of the adopter, in respct to rites, which should take place previous thereto, [no reason of extreme necessity operating,] follows; for, the appropriate time of performance, no longer exists.

Objections, would otherwise exist.

22. But, if however, the initiatory rites, which should have taken place previously, have not been performed, by the natural father; they are, in that case, to be completed, by the adopter even, on account of the indispensable necessity, of removing the taint of the seed and womb; and for the sake of preserving the order, prescribed for the performance of the rites, in question.

But, rites which should have been, but were not, performed, by the natural father, may be so, by the adopter, on account of necessity.

23. And accordingly, if the rite of investiture merely, be performed [by the adopter, the previous rites having been performed by the natural father], the filiation of the son given, as son of the adopter, is completed; in conformity with the text of VASISHT'HA, subjoined. But, this must be

In that case, the performance by the natural father, of the rite of investiture merely, establishes the filial relation of the adopted.

23. *But this must be understood, in respect to an adoption, &c.*] The doctrine of the author, appears to be, that, adoption may take place, at any age†; though the more preferable adoption is that of a child, for the performance of whose rite of investiture, the principal season has not expired. In this case, the author holds, that he becomes filially related, by the mere observance of the rite of investiture, the other previous rites, tonsure and those preceding the same, having been performed by the natural father.

* V. note to § 23, sect. iv. D. M. † V. infra, § 33.

understood in respect to an adoption, taking place, within the primary season for the rite in question, which extends to the eighth year; otherwise, [in the case of an adoption after the expiration of such season,] the capacity of having been able to perform that rite, during the principal season, being wanting, as there would be no ability for the same at a secondary season, the rite would remain unperformed: [unless as required in such inferior adoption, the rite of tonsure, preceded by a sacrifice for male issue, were renewed.] Text

VASISHT'HA.

—"Sprung from one following a different *Sák'há,* (or "branch of the *Vedas,)* the given son even, when invested "with the characteristic thread, under the family name of "the man himself, according to the form prescribed by his "peculiar *Sák'há,* becomes participant of the duties of "such *Sák'há.*"

The relation, to both families, by special agreement, will be declared.

24. And relative to the subject in question, [it is to be observed, that,] should an agreement subsist, stipulating that, the son adopted should be son of the natural father, and adopter likewise, a special rule for his participating, in the family of both, by reason of being a *Dwyámushyána,* will be declared*.

A passage on the subject, of adoption, attributed to the *Pura'nas,* is not authentic.

25. "Oh! lord of the earth, a son having been regularly "initiated, under the family name of his [natural] father, "unto the ceremony of tonsure, does not become the son "of another man. When indeed, the ceremony of tonsure, "and other rites, of initiation *(chúd'ádyá sanskárá)* are "performed [by the adopter], under his own family name, "[then only,] can sons given, and the rest be considered as "issue: else they are termed slaves.—Whether he be one, "whose initiation has been completed, or one whose pupilage "*(s'ais'ava)* has passed, on adoption, after the fifth year,

As there would be no ability,&c.] The author supposes the case of adoption of a child, for whose investiture, the principal season has passed, where the adopter may omit the performance of the sacrifice for male issue, as prescribed for this inferior adoption. On the performance, of this sacrifice, the adopter must perform for the child in question, the rites of tonsure and the rest, whereby filial relation is produced (v.§ 27, 30, 32.)

* V. infra sect.v. § 33.

"the adopter should first perform the sacrifice for male "issue." As for what, they thus read as from the *purânas*, that is unauthentic.

Or if authentic, it cannot be construed, as barring the filial relation of a child, whose tonsure may have been performed by his natural father: or, who may be older than five years.

26. Were it even authentic, still the interpretations given by some, that,—"One initiated in ceremonies down to "that of tonsure, under the family name of the natural "father, bears no filial relation to the adopter; but such "relation obtains, where the ceremonies commencing with "that of tonsure, are performed by the adopter only"— and—"if a child, whose tonsure has been completed [by the "natural father], or one past five years of age, be adopted, "in that case, his filial relation, does not accrue"—are inaccurate. For, a repetition [of the same position, in two sentences of the same passage], would follow;—the generally received rule, as recognized by all good persons, in respect to the filial relation, previous to the investiture of the characteristic thread, of one also, adopted under five years of age, [if uninitiated in tonsure by the natural father,] would be invalidated;—and the adopter dying at that juncture, incompetency [of the adopted], to perform his obsequies, would result.

The correct construction shewn.

27. On the contrary, this is the meaning of the passage.—Filial relation [to the adopter,] of one initiated down to tonsure, under the family name of his natural father, being first barred,—on the repetition of that ceremony, and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure, and the other rites, by the adopter, the servile state of one initiated [by his natural father unto that ceremony], and of him, who has passed his fifth year, is intimated: after the performance of that ceremony, and the rest, [by the adopter], filial relation to him is established. In respect to one, whose initiation has not been performed

26. *At that juncture.*] That is previous to the performance of the rite of investiture of the characteristic thread, for which, the eighth year is prescribed, as the principal season.

[by his natural father], and a child who is under five years of age, this relation is obtained by law alone : and this is notorious.

Or another interpretation, may be admitted.

28. Or, there may be this interpretation ;—" a son, [if adopted,] though initiated as far as tonsure, by his natural father, is not a son [to such father] :'—the author, having thus premised, such son not to be filially related [to his natural father,]—the sentence *'anyatas-cha-putrata'm-yáti'* (meaning 'and he acquires filial relation to another') is subjoined, as a reason; and thus the objection, that one term, *'putrah'* (son) and the particle *'cha'* are unmeaning, is obviated.

Under which *chúd'ádyá* occurring in the text, would intend rites preceded by tonsure.

29. And thus, on account of uniformity of import, with the text of VASIST'HA, before cited, (v. § 23.) by the compound epithet *'chúd'ádyá,'* in the quality, conveyed by which, the term *'chúd'a'* is not included, rites commencing with that of investiture, for persons of a regenerated tribe, would be suggested; but for *Sudras* marriage, and so forth, implied.

Import of the clause commencing "after the

30. "After the fifth year." This regards a *Brahmana* seeking the frnit of holiness, resulting from the study of

28. *Or there may be this interpretation, &c.*] In the original, the two first verses of the supposed extract from the *Púranas*, cited in § 25, run thus—*'pitur-gotrena-yah putrah sanskritah prit'hivi-pate. * * á-chúd' ántamna putrah so putratám-yáti ch'ányatah.*—The translation given, conforms with the commentary in the *Dattaka-Mímánsa:* but a more literal version of these two verses, would be thus.—"Oh! lord of the earth, the son who "*(yah putrah,)* has been initiated, under the family name, of his natural "father, unto the ceremony of tonsure,—that son does not acquire filial re- "lation, to another, *(na putrah sa putratám-ya'ti ch'a'nyatah.")* Against this construction, the author objects justly, that one of the terms *putrah* (son), which occurs twice, and the conjunction *'cha,'* (which signifies 'and'), become redundant and unmeaning: were, as he suggests, the phrase *'na putrah'* construed as the predicate of the position, which preceded; and what follows, as containing a reason for this position; this objection would not apply.—According to the mode of construction adopted, in the translation, the part commencing from *'na putrah'* to the end of these verses, is received, as the predicate, of the position contained in what preceded

29 *By the compound epithet* chu'd'a'dya', *in the quality, &c. &c &c.*] This compound term might either signify. commencing with tonsure, or following tonsure; if the latter construction be adopted, the compound would be denominated *'atad-guna'* that is the term *chúd'a*, would be merely segregative, and not enter into the quality conveyed by the epithet.

30. "*After the fifth year,*" *&c.*] In the extract, cited in § 25, attributed by some to the *puránas*, it is stated, that, a sacrifice for male issue, must be

scripture*. For, since the fifth year only, is the principal season, for the investiture of the characteristic thread, of one desirous of such holiness, as is shewn by this text,—" For a " *Brahmana* desirous of holiness, resulting from the study of " scripture, the fifth year, &c.,"—the passage in question, has the same foundation. But, for one not so desirous,—" after " the eighth year, the adopter, &c."—

fifth year, &c." which occurs in the supposed extract, cited in § 25.

31. [In adoption,] respect should be shewn, to the several principal seasons, for the performance of the *upanayana* rites, of the *Kshatriya*, and the *Vaisya*, respectively. For he only, to whom authority, produced in the principal season, might have attached, is capable, to perform such initiatory rite at a secondary season [if not qualified, by the renewal of the ceremony of tonsure, preceded by a sacrifice for male

In the adoption of a *Kshatriya*, or *Vaisya*, respect must be had, to the principal season, for their *upanayana*.

It is otherwise in regard to tonsure.

performed, where a child exceeding five years of age, is adopted.—This implies that the fifth year limits the more appropriate season for adoption, during which, the filial relation is produced without any special rite, as here alluded to—The author here shews, that the mention of the fifth year, as the limit of this season, has reference, to a *Brahmana*, who is intended, for the study of theology, for whose investiture, (a rite which precedes the acquisition of letters,) that year is prescribed.—He accordingly argues, that in respect to others, not so destined, it is meant, that the eighth year, which is the primary time for the performance, of that rite, limits the more appropriate season for the adoption of such persons : that is, that a sacrifice for male issue must be performed, where one who has past his eighth year, is adopted.—The author, though he does not admit the authenticity of the passage, attributed by some to the *Puránas*, yet construes it, so as to conform with, his own doctrine; viz. that by the observance of a sacrifice for male issue, and the subsequent renewal of initiatory rites one, though adopted after the principal season, for the performance of the rite of investiture of the characteristic cord, may acquire filial relation.

31. *Respect should be shewn to the several principal seasons, &c.*] Different seasons are prescribed for the performance of the *upanayana*,—or rite of investiture, of the characteristic cord, and other peculiar marks,—on a *Brahmana*, *Kshatriya*, and *Vaisya*, respectively.—These seasons, are indicated in the following text of YA'JN'YAWALKYA, translated according to the commentary in the *Mitákshara*. "The *upanayana* rite, of a *Brahmana* takes "place in the eighth year, from conception or the eighth year of his age; "of *Kshatriyas*, in the eleventh; of *Vaisyas*, in the twelfth year, [from their "conception, or birth, respectively.] Some hold according [to the custom,] "of the peculiar family [of the individual."] Another text of the same author relative to the extent, of the period, for the performance of this rite occurs.—"The period for the performance, of this *upanayana* rite, of a *Brah*-"*mana*, *Kshatriya* and *Vaisya*, respectively, extends to the sixteenth, twenty-"second, and twenty-fourth years. Subsequent thereto, should the rite be "unperformed, they become outcasts, and uninitiated persons, excluded from "participation in religious rites, and incapable of being taught the *Savitri*; "except on the performance, of a sacrament denominated *Vrátyastoma*."

* V. D. M. sect. iv. § 53 et note.

issue.] This was before declared (v. § 23.)—But, in regard to tonsure, attention to the secondary season may be observed on account only, of express passages of law.

Those of the three first tribes only, can perform the sacrifice for male issue.

32. 'Sacrifice for male issue.' Since, a person of the three first tribes only, is competent to perform this, by such person, the filial relation must be completed, through the rites of tonsure, and the rest, preceded by a sacrifice for male issue. But, by a *Sudra*, the same even, [is produced,] through the rite of marriage alone—Thus the whole is unimpeachable.

The ancient practice of adoption unrestricted to any period is upheld under the construction in § 27 and 30.

33. And thus, the practice of all the ancients even, in respect to the adoption of a son, unlimited to any particular time, is upheld. For, the construction, suggested [by us, of the suppose extract from the *purânas*] is self-evident*.

Or, under the construction in § 28 the passage may be consistently explained, as importing the common relation, to both fathers, of one adopted, after tonsure.

34. Also, in the same manner, under the second interpretation, (§ 28) the exclusive filial relation, to the natural father, of the adopted son, whose tonsure has been completed, having been first barred, by the conjunction 'and' in the sentence,—"and he acquires filial relation to another, —a common relation to the natural and adoptive fathers, is obtained; on account, of both even, having performed initiatory rites: and this must be understood, where there may be a stipulation to this effect, between the two,—"This is son "to us both,"—and such only is called a *Dwyámushyáyana*, having two fathers, and belonging to two families.

Objection, that, the son of two fathers, can only be the son of the wife technically, so called.

35. But, is it not seen, that the *Kshetraja*, or son of the wife only, is son of tow fathers? Accordingly HARITA.—["The husband] living, [at the time of the appointment,] "they call [the offspring of the same] the son of the wife: "for, [the natural father,] has no controul over him. Were "he dead, [at such time,] they call him *Dwyámushyáyana*: "for, there can be no doubt, as to,—who was the natural "father." MENU says. "But, the owners of the seed, and "of the soil, may be considered in this world, as joint

* V. supra, 27, 30.

"owners of the crop, which they agree, by special compact, "in consideration of the seed, to divide between them. The "special compact proposed, is a stipulation, between the "owners of the seed, and soil, both destitute of male issue, "to this effect,—'Mine is the soil, thine the seed: the off-"spring produced, shall belong to both.'" Conformably, there is this text,—"A son, begotten by one, who has no male "issue, on the wife of another man, under the legal appoint-"ment, is lawfully heir and giver of funeral oblations, to "both families*."—But, this relationship in question, does not appear to apply to the son given; on the contrary, the following passage of MENU, before cited, is conclusive even, of an opposite meaning. "A given son, must never claim "the family and estate of his natural father."

36. Should this be contended, it is wrong; the relation to both fathers, of the son given also, is established: since, by referring to this text of BAUD'HA'YANA,—"What is de-"clared, in respect to one even, of many, regulated by the "same law, let him perform that, for the whole even. They "are considered of the same description,"—the rules, re-garding the son of the wife, are obtained in respect to the son given, and the rest likewise:—and the following text has a general application in the *pravarád'hyáya* of SANK'HYA'-YANA,—"He should perform two funeral repasts, or at one, "contemplating them separately, he should designate at "each oblation, both the adoptive and natural fathers; to-"gether with the two ancestors in immediate ascent above "each."

Over-ruled; the general adopt-ed son, may be son of two fathers.

37. Accordingly, SATYA'-SHA'D'HA by the compendious rule,—"of absolute *Dwyámushyáyanas* of both, &c."—having propounded, a relation to both families, (including the patriarchal saints,) of absolute *Dwyámushyáyanas*, who are sons of the soil, applies by analogy, the rule regarding these, [to sons given, and the rest,] by another aphorism, commencing,—"of sons given, and the rest like the *Dwyá-*

Confirmed by SATYA'-SHA'D'HA.

† YA'JN'YAWALKYA.

"*mushyáyana*, &c."—and this is explained by the commentator*:—"Treating on absolute *Dwyámushyáyanas*, "the author mentions those incompletely so,—'Of sons "given, and the rest, &c.'—unto these only, not to issue "beyond, [does the connection to both families, extend.] "If the initiatory rites are performed by the first only, [the "family is his:] but if by the adopter, that of the latter; "on account of priority. Through him only, in the case of "decendants beyond, [the family is determined."]

The comment on whose text, is cited.

38. The intent of this explanatory passage, is this:—As in the case of the son of the wife,—should there be an agreement, between the two, the adopted son, participates in the family of both: otherwise, where, the whole of the initiatory rites, have been performed by the natural father only, he shares the family of such father; but in the case of the initiation being performed by the adopter, in that of the latter,—that is the adopter,—on account of 'priority,'—meaning superiority. Through him only, in the case of descendants beyond, the family is determined.

And explained.

39. Accordingly PAIT'HINI'SI. "Those sons given, "purchased, made, and the son of an appointed daughter, "who are in such case affiliated, through the adoption, of a "holy saint, by an other, are sons of two fathers."

PAIT'HINI'SI confirms.

40. The meaning is. Where a mutual agreement, between the natural father, and adopter, exists; [those affiliated,] through the adoption, of a holy saint,—that is one propounded by a holy saint,—are *Dwyámushyáyanas*.—This is clearly declared [in the *Prayoga-parijáta*]. "Sons "given, purchased, and the rest, are sons of two fathers: "their marriage, may not take place in either family even, as "was the case of SRINGA S'AIS'IRA."

Explanation of his text which conforms with a passage in the *Prayoga-parijáta*.

41. The state of a son given, as *Dwyámushya'yana*, cannot obtain, since, the property of the natural father in such son, not being extinguished, the rule for the gift, propounded

Objection, that a son given, cannot be a *Dwyámushyáyana*.

* SAVARASWA'MI.

in the text,—"Whom the father or mother may give, "&c."—would be unmeaning.

Over-ruled.

42. This must not be affirmed. From gift, preceded by an agreement, such [as that premised], in the case in question even, the common relation [to both fathers], of such given son, is established; like the property of the owner, (since he himself is one of the objects,) in water made common, (as a river, and so forth,) by a relinquishment, (alluded to in such passages, as that subjoined,) the object of which, is every creature: and which extinguishes, the peculiar property of the individual himself. "This water is relinquished by me, as common, to all beings, let all creatures, "enjoy it, by bathing, drinking, and immersion." Enough has been said.

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SECTION III.

Funeral rites performed, by the absolutely adopted son,—by the Dwyámushyáyana*—Relation of* Sapin'd'a, *in the families of the adoptive, and natural fathers, respectively.*

An adopted son, and the real legitimate son being co-existent, the latter performs the exequial rites.

1. Next, the funeral rites, peformed by a son given, are determined. In respect to these, although the son given, be first adopted, yet the legitimate son, existing, he is not competent, to officiate in the sixteen funeral repasts, ending with the *Sapin'd'i-karan'a;* for, his superiority in rank is barred by DEVALA [who says,] "A real legitimate son "being subsequently born, superiority of rank from age, "does not vest, in them." And a text of YA'JNYAWALKYA, recites; "Amongst these, the next in order, is heir and "presents funeral oblations, on failure of the preceding. "Otherwise, the adopted son, in every respect resembles "the real legitimate one."

An exception obtains.

2. A special distinction obtains at the funeral repast, on the anniversary of the day of death. Accordingly JA'TAKARNA. "Annually *(pratyabda)* let the son of the wife, "and legitimate son, perform [obsequies] according to the "*pa'rvana* form: the other ten sons should perform a rite "dedicated to a single ancestor*."

Explanation.

3. 'The other ten,'—the son given, and the rest.

PARA'SARA, confirms.

4. PARA'SARA likewise.—"[A funeral repast], by the "legitimate son, for a father, who has departed this life, on "all occasions is in honor of three ancestors: that, by those

* V. D. M. sect. iv. § 72 et note.

"belonging to more than one family, *(aneka-gotra)* is "consecrated, to a single ancestor, on the anniversary of "the day of death."

5. "By those belonging to more than one family."— Meaning those belonging to two families.

Explanation.

6. The legitimate son, and the son of the wife also, if they preserve a consecrated fire, are competent to perform a *Pa'rvana*, or double rite. For, the text of JA'VALA,—"By "one preserving a consecrated fire, the funeral repast, is to "be performed always, after the *pa'rvana* form"—corresponds with the *Matsya-Purána*. "By those, other than "the real legitimate son, and the son of the wife, indifferently "whether they do, or do not preserve a consecrated fire, a "rite in honor of a single ancestor, is to be peformed. "This is an established rule."

According to authorities quoted, the legitimate son, and son of the wife, if they preserve a consecrated fire, perform a *Parvana* rite, and the adopted son, under all circumstances, a single rite in honor of a deceased father.

7. An aphorism of SANK'HYA'YANA, propounds a distinction, in respect to the observances prescribed, for the *Dwyámushyáyana*. "Having duly performed, the pre- "paratory ceremonial, called *avanejana*' where there may "be a diversity of fathers, both, at each oblation."

A distinct ceremonial, is prescribed for the *Dwyámushyáyana* by SANK'HYAYANA.

8. Where there may be a diversity of fathers, at each oblation, both, the natural father, and the adopter,—"let "him celebrate" as is understood.

His text explained.

9. In the *Pravarád'hyáya* also. "Those, who are "begotten by a paternal uncle, for the obsequies of a single "person, are the sons of the adoptive father only. Then, "if there be no issue, begotten on their [the natural fathers'] "wives, let [the sons begotten, on the wives of others], "take the estate, and offer in their honor, oblations, conse- "crated to three ancestors: if however, there should be [such "issue], still, such sons should present funeral cakes, to "both even. According to the text of a venerable saint,

The *kshetraja*, or son of the wife, according to a passage, in the *Pravarád'hyáya* under all circumstances, performs certain obsequies, for his natural father, and where, such person has no other son, is his heir, and performs his funeral rites.

7. *Ceremonial called avanejana.*] This must precede the presenting of the funeral cake, and consists, in pouring, from a vessel, on the *kus'a* grass, on which the same is offered, water, white flowers, and sandal wood, previously mixed.

"[the adopted son] should perform two funeral repast, or
"at one, contemplating them separately, he should designate,
"at each oblation, both the adoptive, and natural fathers;
"together with the two ancestors in immediate ascent above
"each."

Explanation.

10. The meaning is;—where there may be no express agreement, on the part of the adoptive father, [that the adopted son, shall belong to both;] and [the natural father,] may not have other offspring: and where there may be such agreement by that person, and such offspring may exist, relation to both fathers, obtains. In the passage cited, an option, in respect to performing distinct funeral repasts, or otherwise, is contained.

The rule in question is general.

11. Nor, does this [merely] refer to the son of the wife; for, by the compendious rule of SATYA-SHA'D'HA,—"of sons given, and the rest like the *Dwyámushyáyana*,&c."—the rules regarding such son, are shewn to be applicable, also to the general adopted son, who may be son to two fathers.

A passage of HA'RITA, conforms.

12. Accordingly HA'RITA. "Of these, in the first place,
"the tutelary saints of the natural father, [are those of the
"adopted son.] He should perform two several sets of
"funeral oblations each consisting of two; or designate
"both, in each *(eka)* oblation, [of one set;] his son—
"in his second, his grandson, in his third, [should do the
"same.] Some hold, three to be partakers of the wipings;
"others that they extend to the seventh degree."

His text explained.

13. 'Of these'—That is from amongst these fathers, in the first place, the set of tutelary saints of the natural father, —in the second, that of the husband of the wife, [are those, of the adopted son, who] has thus two sets of tutelary saints.—["In each *(eka)* oblation"]—a repetition [of the word '*eka*'], is understood on account of the text of APASTAMBA. "If son to both fathers, he should designate "both, at each several oblation."—['In his second'] at his

oblation to his grandfather, the son of the *Dwyámushyáyana.* ['In his third.'] That is,—at his oblation to his great-grandfather, the grandson of the *Dwyámushyáyana.*

14. But, if the adoptive father died first, [the son] should present the oblation [first] to him; if the natural father, then to the natural father; should both have died [at once], then let him present first to the natural father, and last to the adoptive. MA'RICHI, declares this. "He, who may "be procreated on a widow, by a kinsman, or one unrelated, "should first present the oblations to, and perform the "observances of the funeral repast, in honor, of the adop-"tive father, and after this, to the natural father. If in "any instance, the adoptive father should survive [the "natural one], let the issue present, [the oblations] first to "the natural father: but the same must be given [to him] "last, [should he survive; the adoptive father,] being dead. "If both may have died [together, the oblation must be "given], first to the natural father: after him, the son should "present the same, to the adoptive father. Should it not "be first offered to the natural father, it does not endure."

Rules as to the order, in which the son of two fathers, is to perform the funeral rites, of his fathers respectively, shewn by MA'RICHI.

15. By this the performance of a *párvana* rite, by the son of both fathers, on the death of either even, is shewn.

16. In the same manner, by parity of reason, where there may be a diversity of mothers, the sires of the natural mothers, are first designated by a son, who is son to two fathers, at the funeral repast, (suggested by the passage subjoined)in honor of the maternal grandsires: subsequently, the sires of her, who is the adoptive mother—"Where the "paternal sires are honored, there certainly are the maternal."

Whose text intimates that the son of two fathers, is to perform a *pa'rvana* rite, on the death of either.

The same rule applies to the maternal sires,(by either mother,) of the son of two fathers.

17. But, the absolutely adopted son presents oblations to the father, and the other ancestors of his adoptive mother only; for, he is capable of performing the funeral rites of that mother only: and thus, in conformity, with the spirit of the sentence, "He is [destined] to continue the line of his "ancestors,"—which is subjoined as the reason, [in the text

But not so in the case of the absolute adopted son.

of VASISHT'HA,] the prohibition [therein],—"let not a "man give an only son, refers to an adopted son, other than the *Dwyámushyáyana*, or son of both fathers; for [where the adopted son is such], no extinction of lineage ensues, as has already been declared*.

The relation as *sapin'd'a*, extends to three degrees, in either family.

18. The relation, as *sapin'dá*, is next considered. This extends to three degrees; in the family of the natural father, by reason of consanguinity: and in that of the adopter, through connection by the funeral cake.

KA'RSHNA JINI shews this.

19. This KA'RSHNA'JINI, declares.—"As many as there "may be degrees of forefathers: with so many, their own "forefathers, let sons given, and the rest associate, the "deceased. In order, their sons with two forefathers, their "grandsons with *(samam)* one, [should do] the same.— "The fourth degree is excluded. This [relation of *sapin'd'a*] "extends to three degrees."

Explanation.

20 This is the meaning of the text, according as the deceased adoptive fathers, may be sons legitimate, adopted [absolutely], or of two fathers: as many as there may be degrees of forefathers, three or six, with so many, let sons given, and the rest, associate them;—that is—connect by admixture of funeral cakes.—Of the cases in question, where the adoptive fathers are real legitimate sons [the forefathers, with whom their association is to be made], are three, viz. the father, paternal grandfather, and great-grandfather; where sons adopted absolutely, three, viz. their adoptive father, grandfather, and great-grand father; and where sons of two fathers, six, viz. their natural father, and the other two, and their adoptive father, and the other two.

Enlarged on.

21. And thus, it is intimated, that those, who are the revered objects, contemplated at a *párvana* rite, performed by the adopted son himself, are the same, at the *sapin'd'i-karana* ceremony also, celebrated for the adopted son, by

* V. supra, sect. i. $ 26, 27.

his own son: and the sons of an adopted son, should perform his *sapin'd'i-karana,* with his adopter, and two, out of the three forefathers of this latter.—And in the same manner, the grandsons of the adopted son, should perform the same—that is—the association of their own fathers,—by admixture of funeral cakes, with—(for '*sama*' is used by KA'RSHNA'JINI in the sense of this preposition), the adopted son, the adopter, and one out of the three forefathers, of that person; viz. the father of the adopter.

Explanation continued.

22. 'The fourth degree is excluded.'] Whatever person, at any time, performs the ceremony of *sapin'd'i-karana,* for any one, does the same with three forefathers only, of that individual;—by this, [which is the meaning of what preceded the passage cited,] the exclusion of the fourth degree is established. The propounding the same position, [by the passage in question], in conformity with the rule of logic,—"a position having been established, its re-introduction, is for the sake of a peremptory rule"—is meant to bar the relation as *sapin'd'a* [to the adopted son], of those, who (in the case of a real legitimate son), would have partaken of the wipings of the oblations; by reason of their being precluded therefrom [in the present case]. The author declares this very position [in subjoining] 'this:' that is, 'this relation of *sapin'd'a,* &c.'

The general relation of *sapin'd'a* extending to the seventh degree is thus barred.

23. And thus, the general relation of *sapin'd'a,* extending to the seventh degree, which is propounded in the *Mastya-purána,* in the text subjoined, is barred by the special rule in question.—"The fourth and the rest in ascent are the "partakers of wipings, the father and the others participate "in oblations of food, the seventh presents the same.—The "relation by oblations of food, of these, extends to the "seventh degree." Consequently, the contrary doctrine suggested by HA'RITA, in this passage,—"They propound "the partakers of the wipings to be three, or according to "some, they extend to the seventh degree"—is consistent, [as the opinion of the opposer of the correct doctrine].

The same position is propounded in another authority.

24. **This very position, is elsewhere compactly declared.—** "But, of adopted sons, the relation of *sapin'd'a,* extends to "three degrees, in the family of the natural father; and in "like manner, in that of the adopter, this is a fixed rule."

This relation of *sapin'd'a,* however, in both families, only applies to the son of two fathers.

25. This relation of *sapin'd'a,* extending to three degrees in both families, is propounded in respect to the son of two fathers: for, his performing the ceremony of association, by admixture of funeral cakes, with two sets of three ancestors, is declared, [by KA'RSHNA'JINI.] But the connection by funeral oblations, of the absolutely adopted son, obtains in the family of the adoptive father only: on account of the extinction of the funeral oblation, of him, who hath given away his son, intimated in the following text of MENU, before cited—"A given son must never claim the family and "estate of his natural father; the funeral cake follows the "family, and estate: but of him, who has given away his "son, the obsequies fail."

26. "The sons given, purchased, and the rest, who are "adopted from those of his own general family, by obser- "vance of form acquire introduction into the family [of the "adopter.]—But the relation of *sapin'd'a,* is not included." The meaning is—sons given, and the rest; though adopted from those of his own general family, by the observance of form only, participate in the family [of the adopter.] But, the relation of *sapin'd'a,* is not established in them: and such relation, not obtaining in those belonging to the same general family, of course, it can not subsist, in those of a different general family. As for this text of VRIDD'HA GAUTAMA, it is prohibitory of the relation of *sapin'd'a,* extending to seven degrees, which might be inferred, from analogy to the real legitimate son: or, it bars the impurity for ten days, and so forth, arising from the relation of *sapin'd'a.*—But, it does not prohibit totally such relation, on account of the several texts, before cited.

SECTION IV.

The impurity of the adopted son, on occasions of birth and death—His marriage.

1. NEXT, the impurity and so forth, of the adopted son, [on occasions of birth, and death,] is determined. In respect to this topic, [it is to be observed, that] there is no reciprocal impurity, of the absolute adopted son, in the family of the natural father; for, relation to his family, and the presenting in his honor, funeral oblations, being barred, the extinction of uncleanness, is an obvious consequence. But the impurity of the *Dwyámushyáyana*, is in both families.

In the case of the absolute adopted son, reciprocal impurity, in the family of the natural father, does not obtain.

But in both families, in the case of the *Dwyámushyáyana*.

2. In the *Brahma-puráṇa* [it is written], "the son "given, the son self-given, the son made, as well also the "son purchased, and the deserted son, who are always to be "cherished, belong to a different family, present distinct "oblations and perpetuate a different lineage, and on occasions of birth and death, become impure for three days."

In the *Brahma-pura'na*, the impurity is declared to last three days.

3. PARA'SARA. "On occasions of birth, and death, "impurity for three days, is ordained for him, who, whether "of a different, or of the same general family, by the will "[of the adopter] is initiated and adopted."

PARA'SARA confirms.

4. "So also, excepting the legitimate son, on the death "and birth of the son of the wife, and the rest, a general "impurity, lasting three nights, always takes place in every "tribe.—This is a settled point."

Also another passage of the *Brahma-pura'na*.

5. 'Always'—subsequent even to the investiture of the characteristic thread. As the relation of one, though of the same general family, to the family of his adoptive father, is attained through the observance of form, after the previous

'Always' occurring in which is explained, and the general position argued to be correct.

5. *Subsequent even, &c.*] Three days are the period, prescribed for the uncleanness of a person, previous to investiture of the characteristic thread,

extinction of relation, to the family of his natural father; there is no distinction, between an adopted son, of a different general family, [and one of the same.] Therefore, the uncleanness for three days, propounded in the text in question [indifferently for either], is even proper.

The offence of *parivedana* cannot be incurred.

6. Thus, where the adopted son, may be unmarried, the offence of *parivedana**, is not incurred, by the marriage of a legitimate son, subsequently born : nor is there any objection, against an adopted son, marrying before his elder whole brother.

But the adopted son might marry, any female of the family of his real father; and the *Dwyámushyáyana*, one removed more than three degrees.

7. But, since the extinction of his relation by oblations of food, in the family of the natural father, is shewn, the marriage of an absolutely adopted son, might take place therein : and the marriage of a *Dwya'mushya'yana* with the issue of a female removed in relation, more than three degrees, would be proper.

This objection over-ruled.

8. It is not so ; for, in the text of MENU, subjoined, of which (on account of the conjunctive particle 'and') the construction is—'who is not connected as *Sapin'd'a,* to his father [as well as mother];'—the term 'father' is used, to exclude [from marriage], a female related, as *Sapin'd'a* to, and beloning to the general family of, the natural father also, of an adopted son, although exclusively belonging to the family of his adoptive father.—"She who is not con-"nected, as *Sapin'd'a,* to his mother, and father, and not "belonging to the general family of either, is approved "amongst twice born men, for espousal and connubial in-"tercourse."

on occasions of death and birth.—The author obviates an inference, that the period in question, fixed for the adopted son, is so merely in case of his investiture not having taken place.

* See D. M. Note to Sect. VI. § 54.

A further objection refuted.

9. Nor, must it be argued, that, still, where the father of the adopted son, might himself be an adopted son, there would be no reason, barring, the marriage with a female, removed in relation to such father, beyond the third degree; since, her relation, as *Sapin'd'a* to,—and being of,— the general family of the father, are wanting. Because the relation of *Sapin d'a* in question, does not apply to marriage; but is an universal relation, of that denomination, predefined as extending to the seventh degree in the line of the father, and to the fifth, in that of the maternal grandfather.—Thus there is no inconsistency—These several descriptions of relations of *Sapin'd'a,* will be enlarged on in their appropriate places, respectively.

SECTION V.

The succession by inheritance, of adopted sons, lineally and collaterally—in the case of Sudras—*of the* Dwya'mushya'yana.

VRIHASPATI cited, on the subject, of the succession of the adopted son.

1. THE inheritance of the adopted son, is next propounded. On this subject VRIHASPATI says,—"the real legitimate son alone is master of the paternal estate: for the sake of affection, let him allow subsistence to the rest."

Explained.

2. 'The rest'] Those who are excluded from participating, in the estate—'Affection'—Love.—'Subsistence' —Alimony.

YAMA on the same topic.

3. YAMA also.—"Sons are pronounced, by intelligent "saints, to be twelve: of these, six are kinsmen, and heirs; "and six kinsmen. Those versed in the distinctions of class, "declare, that the first, is the one begotten by the man him- "self: the second, the son of the wife; the third, the son "of the appointed daughter; the fourth, the son of the twice- "married woman; the son of the unmarried daughter, is "considered the fifth; and [the sixth], the son secretly born "in the man's house. These six present funeral oblations— "The son deserted, and the one received with a pregnant "bride, the son given, and the son made, and fifthly, the son "purchased, and the son presented by himself. These six, "whose filial relation proceeds from an overt act of accep- "tance, are kinsmen, but not heirs."

NA'RADA on the same subject.

4. NA'RADA. "The real legitimate son; the son of the "wife, by appointment; the son of an appointed daughter;

3. *These six whose filial relation, &c.*] The terms of the original are '*ete-sangamótpannah.*'—The expression disjoined, may be construed as containing, or not containing, before *sangama*, a privative *a*. According to either mode of construction, a difficulty presents itself, of rendering the compound epithet of *ete* (these), so as to apply to the six sons alluded to, and not be applicable to the other six.— The *Sanscrit* reader will perceive, that a translation has been adopted, which it can not be pretended, is suggested obviously by the terms of the text.

"the son of an unmarried daughter; the son received with "a pregnant bride; the son of hidden origin; the son of a "twice-married woman; the deserted son; the son given; "the son purchased; the son made also; and the one given "by himself; these, are declared to be the twelve descrip- "tions of sons. Of these, six are heirs to kinsman; and six "not heirs to kinsman. Each, according to priority in "order, is considered, as superior; and the last successively, "as inferior. On the death of the father, according to "their order, they succeed to his estate. On defect of each "preceding more worthty, let the next less worthty son, "obtain the estate."

Explanation.

5. The meaning is, on default of each preceding, the next succeeding in order, is entitled to the property.

VISHNU also.

6. After having previously enumerated as sons, the real legitimate son, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the son of the unmarried daughter, the son of hidden origin, the son received with a pregnant bride, the son given, the son purchased, [the son made,] the son self-given, the deserted son, and the son obtained, in any manner whatsoever; VISHNU adds, "of these, the first in order, respectively, is the most "worthty: he only is entitled to the estate; but he should "support the rest."

YA'JN'YAWALKYA.

7. After having enumerated,—the legitimate son, the son of the appointed daughter, the son of the wife, the son of hidden origin, the son of an unmarried daughter, the son of the twice-married woman, the son given, the son purchased, the son made, the son self-given, the son received with a bride, and the deserted son,—YA'JN'YAWALKYA, subjoins:—"Amongst these, the next in order, is heir, and presents funeral oblations, on failure of the preceding."

MENU.

8. MENU,—"Not brothers, nor parents; but sons are "heirs to the deceased." And again. "On failure of the "best, and of the next best, let the inferior in order, take

"the heritage; but if there be many equal, let all be sharers "of the estate."

Explanation.

9. 'Equal.'—In respect to virtue, or quality; as being legitimate, the sons of the soil or wife, and so forth.—'Of the best,'—that is of the legitimate son, and the others.—'The inferior in order,'—the less worthy:—Meaning, the son of the wife, and those following.

Another text of the same author.

10. The same author.—"The son of the body, and the "son of the wife, may succeed to the paternal estate; but "the ten other sons, can only succeed, in order to the fami-"ly duties, and their share of the inheritance," HA'RI'TA.—

HA'RI'TA, cited.

"The son begotten by the man himself, the son of the wife, "the son of the twice-married woman, the son of the ap-"pointed daughter, and the son of hidden origin, are kins-"men and heirs.—The son given, the son purchased, the "son deserted, the son received with a pregnant bride, the "son self-given, and the son any how obtained, are heirs, but "not kinsmen."

MENU.

11. MENU.—"Of the twelve sons of men, whom MENU "sprung from the self-existent, has named; six are kinsmen "and heirs: six not heirs, but kinsmen. The son begot-"ten by a man himself, the son of the wife, the son given, "the son made, a son of concealed birth, and a son rejected, "are the six kinsmen, and heirs.—The son of an unmarried "daughter, the son of a pregnant bride, the son bought, the "son of a twice-married woman, the son self-given, and the "son by a *Sudra*, are the six kinsmen, but not heirs."

BAUD'HA'YANA.

12. BAUD'HA'YANA.—"He pronounces the real legiti-"mate son, the son of an appointed daughter, the wife's "son, the sons given and made, the son of concealed origin, "and the deserted son also, participators in the estate,—"the son of an unmarried daughter, the son received with "a pregnant bride, the son bought, the son of a twice-mar-"ried woman, also the son self-given, and the *Nishâda*, or "son of a *Sudra*, he pronounces partakers of the family."

13. This declaration, that the son of the unmarried daughter, and the rest, participate in the family only, is for the sake of barring, their taking a share of the heritage where, one even of the other before-enumerated, viz. the real legitimate son, and the rest, may exist.

Explanation.

14. VA'ISHT'HA having previously mentioned, the son received with a pregnant bride, the son bought, the son self-given, the deserted son, and the son by a *Sudra* woman: and alluding to the legitimate son, and the rest, in another place says: "Where there may be no heir to a person of any of the tribes, let these take the heritage."

VAS'ISHT'HA.

15. DEVALA, having recited the real legitimate son, the son of an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the deserted son, the son received with a pregnant bride, the son of a twice-married woman, the son given, the son self-given, the son made, the son purchased, adds: "Those twelve, are pro-"nounced sons; for the sake of issue: some are sprung from "himself: some from another also: some acquired by [an "overt act of adoption]: and others filially related indepen-"dent thereof. Of these, the first six, are kinsmen and "heirs [to collaterals], the rest are so merely to the father: "and a special rule obtains, according to the priority in "rank of the sons: all these sons are considered, as heirs, "to one having no real legitimate son; but, should a son "be subsequently born, no rite of primogeniture attaches "to them. Of these, those who are equal in class, take a "third share; but those inferior in rank, should live in sub-"jection to one of equal rank, receiving maintenance."

DEVALA.

16. KA'TYA'YANA.—"If a legitimate son, be born, the "rest are pronounced sharers of a third part; provided they "belong to the same tribe; but if they be of a different "class, they are entitled to food, and raiment only.—In

KA'TYA'YANA.

16. *Sharers of a third part.*] In citing this text, the author of the *Mitákshara*, adopts the reading which gives a fourth part. "This reading

"some copies the reading is "are pronouced sharers of a "fourth part."

VAS'ISHT'HA.

17. VAS'ISHT'HA.—"When a son has been adopted, if "a legitimate son, be afterwards born, he shares a fourth "part; provided [the estate] may not have been expended "in acts of merit."

Explanation.

18. 'He'] the adopted son. 'Provided,' the whole estate (which is understood) may not have been expended by the legitimate son, in acts of merit,—that is, in sacrifice, and so forth.

The apparently conflicting authorities, cited, are reconciled.

19. For the sake of removing, the conflicting contradictions, of several varying texts of MENU, and the rest, the following interpretations, are offered on these texts. The declaration, in VRIHASPATI's text, that the real legitimate son succeeds exclusively, to the estate, and that the rest, are entitled merely to subsistence, regards such sons of the wife, and the rest, who are unequal in class; on account of uniformity with text of KA'TYA'YANA, and DEVALA. And the rule also, in the texts of NA'RADA, and the rest, for the succession of the son given and the rest, to the estate, on default of the son of the wife, and the rest, regards their succession to the whole estate: and therefore, the rule for the fourth of the share of the real legitimate son propounded by VA'SISHT'HA, where, such son may be born subsequent to the adoption, of a son given, must be understood as applying to a son given.

The rule for the third share propounded in § 15, 16 is relative to the given son, eminently endued.

20. So, also the rule for succeeding to a third share in the texts of DEVALA and KA'TYA'YANA, must be alleged, to refer to a son given, endued with eminent qualities: on account of uniformity, with the following text of MENU.—"Of the man, to whom a son has been given, adorned with

"(observes Mr. COLEBROOKE*) is followed in the *Madanaparijá'ta Vírami-* "*trodaya* &c. But the *Calpataru*, *Retna-ca'ra*, and other compilations "read 'a third part' —vide JI'MU'TA-VA'HANA, "C. 10. § 13."

* V. translation of *Mit.* on Inh. note to ch. 1, sect. xi. § 25.

"every quality, that son shall take the heritage, though "brought from a different family."—[' With every quality'] class, science, observance of duties.

Some construe it, as referring to the son of the wife.

21. Others affirm, it must apply to the son of the wife ; in conformity, with this passage in the *Brahma-pura'na* : "Let the real legitimate son even, who is subsequently "born, enjoy the whole estate—the son of the wife takes a "third share, the son of an adopted daughter, a fourth."

The distinction of quality, also reconciles, the apparently conflicting doctrines of authors, that the adopted son is, and is not heir to kinsmen.

22. In the same manner, the doctrine of one holy saint, that the son given, is an heir to kinsmen,—and that of another, that he is not such heir,—are to be reconciled by referring to the distinction of his being endued with good qualities, or otherwise. By reason of succeeding to the estate of *sapin'da* kinsmen, as well as, to that of the father, he is [argued, by the one, to be] heir to kinsmen ; and, on account of the particle 'only' in the phrase, "of the father only" (occurring, in the passage subjoined), from inheriting merely of the father, he is [argued by the other, not to be] such heir.—" Of these the first six are heirs to kinsmen : "the other six of the father only."

And also the variation of rank, assigned him, by different authors, in the series of heirs.

23. And thus, [the objection of] variation, from the son given, being enumerated higher, and lower in the order of inheritance, and so forth, by different holy saints respectively, is obviated by the distinction as to his qualities, good and bad.

Conclusion, that the adopted son inherits, collaterally.

24. Therefore, by the same relationship of brother, and so forth, in virtue of which the real legitimate son would succeed to the state, of a brother or other kinsmen, where such son may not exist, [the adopted son] takes the whole estate even.

Objection, that the grandson being the adopted son, of an adopted son, would share equally with an uncle, in the heritage of the grandfather.

Over-ruled.

25. Since it is a restrictive rule, that a grandson succeed to the appropriate share of his own father, the son given, where his adopter is the real legitimate son of the paternal grandfather, is entitled, to an equal share even, with a paternal uncle, who is also such description of son : therefore, a grndson, who is an adopted son, may [in all cases], in-

herit an equal share even, with an uncle.—This must not be alleged, [as a general rule.] For there would be this discrepancy: where, the father of the grandson, were an adopted son, he would receive a fourth share: but the grandson, if he were such son, [of him,] would receive an equal share [with an uncle in the heritage of the grandfather]. And accordingly, whatever share, may be established by law, for a father of the same description, as himself; to such appropriate share of his father, does the individual in question, [viz. the adopted son of one adopted,] succeed. Thus, what had been advanced, only is correct. The same rule is to be applied by inference to the great-grandson also.

An opponent alleges, that the adopted son, may not succeed, to empire, whatever be his right to the general estate: as would appear from two passages from the *Védas.*

26. But, although the son of the wife, the son given, and the rest may succeed to the general estate, their non-succession to empire, is advanced.—Thus, it is ordained in the *Ve'das*—"The legitimate son, the son of the wife, the son "given, the son made, the son of concealed birth, and, the "son rejected, take shares of the heritage. The son of "an unmarried girl, the son of a pregnant bride, the son "bought, the son of a twice-married woman, the son self-"given, and the slave's son; these six are contemptible, as "sons: on failure of the first in order respectively, let him "invest the next with filial rights. But let him not appoint "to the empire, the son of a twice-married woman, nor a "son self-given, nor one born of a female slave."—In the same authority also—"Let not the king invest in the em-"pire, the wife's son, and the rest: [nor] cause to be com-"pleted through such sons, the solemnities for his fore-"fathers, a legitimate son, existing."

His objection is obviated. The two passages are consistent, and such general position cannot be deduced.

27. It is replied—If another ordinance of law exist, a special rule, for the sake of convenience, [must be construed] as conveying even, the same meaning. Therefore, the first passage cited, which is declaratory, of the right to succession, of the next in order, on failure of each preceding, extends even to the whole empire, as conforming with the texts of Na'rada, and the rest, before mentioned: and the

latter passage prohibits the equal participation, of the son of the wife, and the rest, if a legitimate son exist; or it refers to a son of the wife, and the rest, unequal in class: otherwise, it would be vexatious, were adverse meanings deduced from each passage. But, if however this is admitted [and disregarded], then [we allege], that by the passage in question, the appropriate shares of the son of the wife, the son given, and the rest, respectively, are not forbiden, if a real legitimate son exist; but, the investing such son, with empire, is ordained [by that author], after having previously barred the same, in respect to those sons, in case of the existence of a real legitimate son.

Conclusion.

28. Thus, the son of the wife, the son given, and the rest, receive the share prescribed for them, by the general law. For, grounds for contracting the operation of the same, are wanting: nor does the particular passage in question, obstruct its operation: for, that relates to a different subject. Accordingly, their right to inherit, is clearly laid down in the preceding passage,—"take shares of the heritage,"—Nor can it be said, they participate [merely] in the estate, other than the empire. For, the empire also is treated on, in the passage in question. The exclusion of the son of the twice-married woman, and the rest, from the empire, although each preceding in order may have failed, is in virtue of a distinct provision, in respect to them.

In the *Sudra* tribe the partition for the adopted son is different.

29. The mode however, of partition, between the son of the wife, the son given, and the rest, and the legitimate son, which has been propounded in what preceded, does not apply to the *Sadra* tribe.

He shares equally with the legitimate son, during the father's life, and at a partition subsequent to the father's death, takes the moiety of the share of the legitimate son, as is intimated by

30. Since, in the following texts of MENU and YA'JN'YAWALKYA respectively, a share, equal to that of the real legitimate son, is prescribed for the son even, by a female slave, of a man of the class in question; and the co-heirship, with the daughter's son, of such son, only when having no brother, is intimated; the equal partition of the son of the wife, the son given, and the rest, with the real legitimate

son, whilst the father lives, and their succession to the moiety of the share of such son, where the father may be dead at the time of partition, follow *a fortiori*.—And otherwise, there would be a great inconsistency, if where the son of the wife, the son given, and the rest, took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share, with the legitimate son.—Menue—"But a son, begotten by a man of the servile class, on his "female slave, or on the female slave of his male slave, may, "by permission, take a share of the heritage. Thus, is the "law establised." YA'JN'YAWALKYA—"Even a son, "begotten by a *Sudra*, on a female slave, may take a "share, by the father's choice. But, if the father be dead, "the brethren should make him partaker of the moiety of "a share; and one who has no brothers, may inherit the "whole property; on default of daughters' sons."

MENU.

YA'JN'YAWALKYA.

31. If, according to this authority, where there may be no son of the wife, and the rest, but there may be a wife and daughter, the daughter's son be entitled to share, [with the son, by a female slave]; the rule for the succession of the daughter, [or other proper heir] would be infringed; therefore, if any even, in the series of heirs down to the daughter's son, exist, the son by a female slave, does not take the whole estate; but on the contrary, shares equally with such heir.

The term 'daughter's son,' occurring in the text of YA'JN'YAWALKYA, is merely illustrative.

32. Accordingly, the text subjoined, must be construed, as referring merely to the *Sudras*. "A son given, being "thus adopted, if by any chance, a legitimate son should "be born, let them be equal partakers of the father's

Other authorities cited, refer to *Sudras*, and support the doctrine advanced.

31. *If according to this authority.*] The text of YA'JN'YAWALKYA provides, that the son by a female slave, who has no brothers, shall not take the whole estate, where there may be a daughter's son.—Thence, it is inferried, that the daughter's son, shares with him.—It is the object of the author to shew, that the term 'daughter's son,' is not restrictive in its sense, but includes any heir, enumerated in the series after the son down to the daughte's son; viz. the wife, the daughter, the daughter's son.

"estate*." So also in the following text, the equal participation of all lawfully begotten *Sudras*, having been first propounded, the succession to equal shares, of the other sons likewise, is subsequently declared by the sentence, ("if there be a hundred sons") occurring therein. "For a "*Sudra*, is ordained a wife, of his own class, and no other. "Those begotten on her, shall have equal shares; if there "be a hundred sons [the same mode of partition shall "obtain]†." If the sentence in question, be referred to the real legitimate son only, the position contained in it, being obtained from what preceded, its repetition would be unmeaning.

The right by inheritance of the *Dwyámushyáyana*, in the estates of his natural father and adoptive father, respectively.

33. The son given, who is a *Dwyámushyáyana*, if both his adoptive and natural fathers have no other male issue, takes the whole estate [of both]: one adopted, where legitimate issue [of the adopted] existed, does not participate [in the estate of the adopter]; but a legitimate son, being born, [to the natural father,] subsequent to the adoption, [the adopted son] takes half of the share of a legitimate son. If [however such issue be subsequently born to the adopter, the adopted son in question] takes half of the share which is prescribed by law for an adopted son, exclusively related to his adoptive father, [where legitimate issue may be subsequently born, to that person.]

Confirmed by passages cited.

34. The *Pravarádhyaya* declares this,—"Should they "have no offspring, begotten on their wives, [the adopted "sons] take the whole estate."—A text of NARADA, also [declares]. "Let those, being sons to both fathers, pre- "sent separately to each, oblations of food, and water; they "take the half of a share, in the estate of the contributor of "the seed, and owner of the soil." It has been before said, that the terms contributor of the seed, and owner of the soil, are illustrative severally of the natural, and adoptive fathers.

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* VRIDD'HA GAUTAMA. † MENU 9,158.

SECTION VI.

Exclusion from inheritance, in what cases.

The adopted son of a disqualified person, can not inherit in, but takes alimony from the estate of his paternal grandfather.

1. As sons, blind, lame, and so forth, do not inherit,—and since it is ordained, that their legitimate son, and son of the wife only, participate in the estate of the paternal grandfather; a son given, or other description of son, adopted by such persons, have no right to the estate of the paternal grandfather; but to maintenance only. For alimony, being provided for the wives of persons blind, and so forth, maintenance for their adopted sons, is inferred *a fortiori.*

A certain author shews this.

2. So also, having previously declared sons blind, lame, and so forth, not to be heirs, an author adds,—"Of these, "the sons legitimate, and sons of the wife, who are free "from defect, participate in a share: the childless wives, of "those, [who are blind, and so forth,] are to be supported, "if virtuous. Their daughters are to be maintained as "long as unmarried."

One adopted, by a man having legitimate issue, and generally without observance of form, does not inherit, as appears from

3. In the same manner,—since it is shewn, that a son given participates with a real legitimate son, born subsequent to his adoption,—a son adopted, where a legitimate son exists, does not take a share. Accordingly, an author declares, the non-succession to a share, of one adopted without observance of rule:—"Him existing, a son being created, "and a son given, existing, one being adopted informally; "that estate is his only, who is justly master of the father's "wealth"—MENU. "He, who adopts a son without "observing the rules ordained, should make him the participator, of the rites of marriage, not a sharer of the "wealth*."

MENU.

Nor can an adopted son of a different class in-

4. It is declared, by an author in the following text, that a son given likewise, who is of a different class, does not

1. *And since it is ordained that their legitimate son, &c. &c.*] The following is a text of YA'JN'YAWALKYA.—"But their sons, whether legitimate, or "the offspring of the wife by a kinsman, are entitled to allotments, if free "from similar defects."—On this, the author of the *Mitákshara* thus comments,—"The specific mention of "legitimate" issue and "offspring of the "wife" is intended to forbid the adoption of other sons."

* This text is not found in the institutes of MENU. v. D. M. Sect. V. § 45.

inherit. "If one of a different class, should however in "any instance, have been adopted, as a son, he should not "make him the participator of a share.—This is the doc-"trine of S'AUNAKA." Something to this effect has been before declared.* Sufficient has been said.

herit, as is shewn by S'AUNAKA.

PERORATION.—This treatise, succinctly exhibiting the rules, relative to the adopted son, is excellent, and the heart-delighting preserver of law, through the serious application of students. Thus, is the DATTAKA-CHANDRIKA' compiled by the great preceptor, the fortunate DEVAN'D'A-B'HAT'T'A† completed.

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* Vide supra Sect. I. § 14.

†. The printed copy, as well as manuscripts, read KUVERA. As however, the author avows himself, to be the writer of the SMRITI-CHANDRIKA', which is known as the production of DEVAN'D'A-B'HAT'T'A, this name in the translation has been substituted.

FINIS.

A SYNOPSIS,

OR

GENERAL SUMMARY

OF THE

HINDU LAW OF ADOPTION.

THE *Hindu* Law of Adoption may be classified under the following heads:

1st. The qualification and right to adopt.

2nd. The qualification and right to be adopted.

3rd. The form to be observed in adoption, and the effect of its omission.

4th. The effects of adoption.

5th. Special rules.

It should be premised, that in the present age, amongst the various subsidiary sons* recognized in codes of law, according to the authority of writers, confirmed by practice, only those technically denominated, the son given *(Dattaka* or *Dattrima)* and son made, *(Kritrima* or *Krita)* are capable of being affiliated†. The author of the *Dattaka Chandrika*, indeed admits the son given alone.—In effect however, without any great latitude, a son self-given, and a son rejected, might perhaps be included ‡ under the general denomination of the 'son made,' the *Kritrima*, or *Krita putra* (vulgarly called *'Karta puter')*: and it should not be omitted, that in treatises of law, the term *Dattaka*, or son given, is sometimes used to denote an adopted son, generally.

v. D. M. Section I. § 64, 65. v. D. Ch. Section I. § 9.

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* See these enumerated in a Note § 33. Sect. I. D. M.
† v. Notes I. and II. subjoined.
‡ v. Note III subjoined.

X

HEAD FIRST.

The Qualification and Right to Adopt.

D. M. Sect. I. § 3. D. Ch. Sect. I. § 3.

THE primary reason for the affiliation of a son, being the obligatory necessity of providing for the performance of the exequial rites, celebrated by a son, for his deceased father, on which the salvation of a *Hindu* is supposed to depend, it is necessary that the person proceeding to adopt, should be destitute of male issue, capable of performing those rites.

D. M. Sect. I. § 6.

D. M. Sect. I. § 13. D. Ch. Sect. I. § 6.

By the term issue, the son's son, and grandson, are included. It may be inferred, that if such male issue, although existing, were disqualified, by any legal impediment, (such as loss of cast,) from performing the rites in question, the affiliation of a son, might legally take place.

A doubt might be entertained*, as to the validity of an adoption, by one not being in the order of the '*Grihi*' (the house-holder or married man), or by a blind, impotent, or other person, disqualified from inheriting. The more correct opinion, however, appears to be, that an adoption, by any of the persons described, would be valid : though, it seems reasonable, that the affiliation, of one excluded from inheritance, should confer no right of succession on the adopted, of which the adopter is debarred by law.

D. Ch. Sect. VI.

D. M. Sect. I. § 15. 29. D. Ch. Sect. I. § 7.

The same reason, which imposes the necessity of adoption on a man, not equally applying to a woman, the latter, (at least such seems the more accurate and prevailing doctrine,) is incapable in her own right of adoption†, though, it is admitted that by his sanction‡, she may affiliate on the part of her husband, a son who would necessarily be filially related to herself. NANDA PAN'D'ITA denies generally the authority

D. Ch. Sect. I. § 24. D. M. Sect. I. § 15. et seq.

* v. Note IV. subjoined.

† v. Note V. subjoined. ‡ v. Note VI. subjoined.

of a widow to adopt, assigning a reason, by no means satisfactory, that the assent of her husband is impossible : but it is reasonable to admit, consistent with practice, and the opinion of other authors, the validity of an adoption made by a widow, under the sanction of her husband written or formally expressed during his life time, and perhaps, in some places under that of kinsmen.

HEAD SECOND.

The qualification and right to be Adopted.

THE first, and fundamental principle is, that the person proposed to be adopted, be one, who, by a legal marriage with his mother, might have been the legitimate son of the adopter. By the operation of this rule, a sister's son, and offspring of other female, whom the adopter could not have espoused, and one of a different class, are excluded from adoption. In the present age, marriage with one, unequal in class, is prohibited.

D. M. Sect. V. § 16. et seq. D. Ch. Sect. II. § 8.

NANDA PAN'D'ITA declares, that a woman may not affiliate a brother's son: if his opinion be corret, it might be consistently argued, that, where a woman is proceeding to adopt with the sanction of her husband or kindred, she must not select generally, one with whose father she could not have legally married.

D. M. Sect. II. § 33. 34.

It is an obvious inference, that the person selected should be exempt from any disqualification, which might prevent him fulfilling the purpose of the adoption.—It has been intimated by writers on law*, that proximity of kindred ought to determine, the choice of an adopted son. But, though NANDA PAN'D'ITA extends this principle with elaborate minuteness, it can not be regarded, as a rigid maxim of law, vitiating the adoption of a remote, where a

D. M. Sect. II. § 11. 12. et seq.

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* VAS'ISHT'HA, SAUNAKA, &c.

D. M. Sect. II. § 28. 37.
D. Ch. Sect. I. § 20
*Mitákshara**.
Dwaita Nirnaya.

near kinsman,—or of a stranger, where a relative,—may exist. The right however, of a whole brother's son, to be adopted in preference to any other person, where no legal impediment may obtain, seems to be generally admitted, and may be regarded as a received rule of law.

D. M. Sect. IV § 1 3.
D. Ch. Sect. I. § 29.
D. Ch. Sect. III. § 17.
D. M. Sect. II. § 37. 38.
D. Ch. Sect I. § 28.
D. M. Sect. I § 30.
D M. Sect. II. § 44

An only son† can not become an absolutely adopted son *(Sud'ha-Dattaka)* but, he may be affiliated, as a *Dwya'mushya'yana*, or son of two fathers. In this case, the reason of the prohibition,—viz. extinction of lineage to the natural father,—would not apply. An only son of a whole brother accordingly, if no other nephew exist for selection, must be adopted by his uncle, requiring male issue, and is son of two fathers. The same person can not be adopted by more than one individual, except in the case of one nephew, by several uncles, the whole brothers of his natural father. It may however be inferred, that a legal impediment would exist, to the affiliation, by an uncle, of a nephew, whom his father had given away in adoption, as a '*Sud'ha-Dattaka*,' who retains no filial relation to his natural father.

To render the adoption valid and complete, it is necessary, that the person adopted should assent, or being a minor, be given by a competent party‡. On the subject of the legal ability, to give a son in adoption, some difficulty exists in extracting a consistent doctrine§. The more correct opinion appears to be—1st. That, the father may give away his minor son without the assent of the mother, though it is more laudable that he should consult her wishes.—2nd. That, the mother generally is incapable of such gift while the father lives.—3rd. That she, however, on her husband's death, may give in adoption her minor son, and even during the life of that person, in case of urgent distress and necessity. A man,

D. M. Sect. IV. § 9. et seq.
D. Ch. Sect. I. § 7. 31. 32.

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* Trans. on Inh. Chap. 1. Sect. XI. § 36.
† v. Note VII. subjoined.
‡ v. Note VIII. subjoined.
§ v. Note IX.

who had permanently emigrated, entered a religious order, or become an outcast, being civilly dead, would be regarded as virtually deceased.

Discrepancy of doctrine amongst some writers, and the silence of otheɪs, have left doubtful, the determination of these questions ;—1st. Whether the adoption of one, who has attained any particular age, is barred ;—2nd. Whether the performance, in the family of the natural father, of any, and what particular initiatory rites, constitutes an insuperable objection to, being adopted.

On the subject of these questions, a passage attributed to the *Ka'lika-pura'na,* (the authenticity and meaning of which are contested) is usually cited*. According to JAGAN-NA'THA, the compiler of the Digest, this constitutes an absolute prohibition, against any adoption whatsoever, of one, whose age exceeds five years, or on whom, the initiatory rite of tonsure, may have been performed in the family of his natural father†. And, in a case‡ in which the adoption of one older than five years, was contended to be illegal, on the opinion of its *Pandits,*—declaring according to the *Hindu* law, as received in *Bengal,* the adoption of such person to be legal, provided, the initiatory rites (*sanska'ra'*) in the family of the natural father have not been, and in that of the adopter be, performed—the *Saddar Dewani Adawlut* appears to have determined the following points as aplicable to *Bengal,* where, it should be observed, the *Dattaka* form of adoption chiefly, if not solely, prevails.§—1st. That, adoption is restricted to no particular age.—2nd. That, one initiated in tonsure in the name and family of his natural father, is incapable of adoption.—3rd. That, the age

* v. D. M. sect. IV. § 22 ; et D. ch. Sect. II. § 25.

† v. Digest Ch. IV. Sect. VIII.

‡ v. Printed reports on select cases.—KEBUT NARAEN *versus* MT. B'HOBINEESREE.—Case No. 22 of 1806.

§ v. Note X. subjoined.

of the person selected for adoption, must be such, as to admit of the ceremony of tonsure being performed in the adoptor's name and family.

The limitation of adoption to any particular age, is thus over-ruled : but without presuming to question, as aplicable to *Bengal,* the accuracy of the other two points of law, resulting from the decision referred to, there is no impropriety in expressing a doubt, whether they can be received as constituting a general rule universally decisive on the questions, which they regard.—1st. Such rule would be at variance with the doctrines, of the *Dattaka Mímánsá,* and *Dattaka Chandriká,* as detailed in a note subjoined*.—2nd. The authenticity of the passge, attributed to the *Kálika-purána,* on which the opinion of JUGNNATHA, and the *Pandits* of the *Saddar Dewani* is founded, is justly denied, and it is interpreted, as admitting the adoption of one, although initiated in tonsure, by his natural father.—3rd. The received definition of the *Kritrima* son, and particularly the mode of affiliation† current in the *Mait'hila* country, obviously refer to one of years somewhat mature, who, if not necessarily, would mostly, be initiated in tonsure, by his natural father: and the adoption of such person is certainly justified by practice, obtaining in some parts of *India.*

The difficulty, or rather impossibility, of defining any unvarying principles, universally decisive on the questions referred to, is obvious. The most general and consistent rule, which presents itself, is this‡.—Any person, on whom the adopter may legally perform, the *Upanayana* rite§, is capable of being affiliated as a *Dattaka* son: while one, not so qualified may be lawfully adopted, as a *Kritrima* son.

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* Note XI † See that propounded by *Rudra Dhára,* in Note XVI.

‡ v. Note XII. Subjoined.

§ For the rules, for performiing the rite of *Upanayana,* consult D. Ch Note to Sect II. § 31: and for the designation and order, of the different initiatory rites, see D. M. Note to Sect. IV. § 23.

HEAD THIRD.

The form to be observed in adoption, and the effects of its Omission.

REGARDING the mode of adoption, a text of VASISHT'HA, is most usually cited. This enjoins, that, the party proceeding to adopt, should previously give notice to the ruling power (*Ra'ja'*), and after having invited kinsmen, should complete the adoption, by the observance of the prescribed solemnities, viz. a burnt sacrifice, and recitation of the prescribed prayers. The forms, propounded at greater length by SAUNAKA, VRIDD'HA GAUTAMA, BAUD'HA'YANA, and other primitive writers, essentially conform with this of VA'SISHT'HA. The former provide for the attandance of *Brahmanas*, and an officiating priest, to demand the son to be given.

v. D. M. Sect. V. § 31.

D. M. Sect V. D. Ch. Sect. II.

The expression *'Ra'ja'* has been explained by commentators, to signify the chief of the town or village. They seem however agreed*, that, the notice enjoined, and the invitation of kinsmen, are no legal essentials to the validity of the adoption, being merely intended, to give greater publicity to the act, and to obviate litigation, and doubt, regarding the right of succession.

D. Ch. Sect. II. § 6.

The form propounded by VA'SISHT'HA, and more particularly those by the other, holy writers in pursuance of the works of eminent authors, may be correctly regarded, as referring exclusively to the son given†; the adoption of a *Kritrima* son, being held to be valid, without the observance of any particular form or solemnities‡.

Should a son be adopted, without the observance of prescribed form, his filial relation would not be established,

D. M. Sect. V. § 45 & 46.

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* v. Note XIII. † v. Note XIV. ‡ v. Notes. XV. & XVI.

D. Ch. Sect. II. § 17
D. Ch. Sect. VI. § 3.
D. M. Sect. IV. § 22 et seq.
D Ch Sect. II. § 20. et seq.

but he would be entitled to assets sufficient to defray the expense of his marriage.

The *Dattaka* adopted son, except perhaps in the case of a nephew, affiliated by an uncle, must be initiated in certain rites, in the name and family of his adoptive father, and the *Kritrima* son, in some instances may, but in all, need not necessarily be so initiated*. The question as to the particular rites, required, has already been dicussed under the preceding head.

HEAD FOURTH.

The Effects of Adoption.

D. M. Sect VI.
D. Ch. Sect. V.

The legally adopted *Dattaka*, or son given, in all cases is, and the *Kritrima*, or son made, in some instances may be, invested with every filial right, in respect to his adoptive father, of whose family he becomes a member†.

D. M. Sect. VI. § 6 7.
D. Ch. Sect II. § 18. 19.

The *Dattaka* adopted son ceases, to have any claim to the family or estate; and is incapable of performing the funeral rites of his natural father, except, where affiliated as a *Dwyámushyáyana*, or son of two fathers. This rule would not apply to the *Kritrima* adopted son, who would be necessarily the son of two fathers‡, unless, (if such case could occur,) where, wholly uninitiated in the family of his natural family.

D. M Sect. VI. § 10. & 47.

The adopted son cannot marry, any kinswoman related to his father and mother, within the prohibited number of degrees, as his consanguineal relation endures: nor the son of two fathers marry in the general family of either.

D. Ch. Sect. IV. § 2. et seq.

The adopted son not only inherits of his adoptive fathers, but likewise lineally and collaterally§, of the near and distant kinsmen of that person. He likewise represents the real legitimate son, in relationship to his adoptive mother, whose

* v Note XVII.
† v. Note XVIII. ‡ v. Note XIX. § v. Note XX.

ancestry are his maternal grandsires. The rule however, now suggested, would not apply to the *Kritrima* son, as usually adopted in the *Mait'hila* country*.

D. M. Sect. VI § 50. 51. 52.

HEAD FIFTH.
Special Rules.

Firstly.—Regarding the Dwyámushyáyana.

THE adopted son may retain filial relation to his natural father, in which case, he is called a *Dwyámushyáyana*, or son of two fathers. This double filial relation proceeds from a special agreement, between the adoptive and natural father, at the time of adoption, or may exist without such agreement, as mostly, if not always, in the case of the *Kritrima* adopted son, who is not alienated by his natural father. In the first case, such son is denominated a complete *(nitya)*, in the second, an incomplete *(anitya)*, *Dwyámushyáyana*.

D. M. Sect. VI. § 41. et seq. D. Ch. Sect. II. § 36. et seq.

The adopted son, who is son of two fathers, inherits the estate and performs the obsequies of both fathers, but, the relation of his issue (except in the case of the *Kritrima* son, as usually affiliated in the *Mait'hila* country), obtains exclusively to the family of the adoptive father.

D. M. Sect. VI.

Secondly.—Regarding the succession of the adopted Son.

Thirdly.—Regarding the succession of co-existent Legitimate and Adopted Sons.

WHERE, subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share† according to the *Dattaka Chándriká*. A distinction however obtains

D. M. Sect. V. § 40. D. M. Sect. X. § 1. D. Ch. Sect. V. § 17.

* v. Note XXI.
† v. Note XXII. Subjoined.

in the case of the *Dwyámushyáyana.*—From an obscure part of that work, it would appear, to be the doctrine of its author, that such son, would only take half the share, to which the son absolutely adopted, would be entitled, in participating with a legitimate son, subsequently born.—On the same principles, this author appears to provide that, where legitimate issue is subsequently born to the natural father, the *Dwyámushyáyana* only takes in the estate of such father, the half of the share of a legitimate son.

ILLUSTRATIVE NOTES REFERRED TO, IN THE PRECEDING SYNOPSIS.

NOTE I.

Only those technically denominated, the son given, &c. (p. 147)]. On the subject of sons, to be affiliated in the present age, the two texts of law quoted in D. Ch. Sect I. § 9. are usually cited. The term 'son given,' occurring in the latter, is explained in the *Vyavahárá-Mad'hava**, and other works, as likewise denoting, the 'son made'—The *Putrika'-putra,* does not appear to be regarded as a subsidiary son†, and it is not unreasonable to infer, that the affiliation of such son, would be valid in the present age. The term '*aurasa*' or 'legitimate son,' occurring in the text noticed, might consistently be construed as also indicatory of the '*Putrika'-putra.*' This term is used to denote, a daughter, appointed to be a son, the one appointed to raise up issue, and the son of either.—YA'JN'YAWALKYA declares, the *Putriká-putra,* to be equal to the real legitimate son‡, and MENU propounds that, there is no difference between a son, and an appointed daughter, and a son's son, and the son of such daughter§. Further, an equal division of the heritage is ordained between the *Putirká-putra,* and a real legitimate son, subsequently born. It should be observed however, that *Jímúta-Va'hana* denies that a daughter, appointed to raise issue, can acquire any superior right, unless she bear or be likely to bear a son‖.

NOTE II.

The 'son given' (Dattaka *or* Dattrima) and *'son made'* (Kritrima *or* Krita) (p 147)]. For the description of the 'son given' by MENU, see D Ch. Sect. I. § 12. The same author thus describes, the son made.—"He is considered "as a son made, whom a man takes as his own son, the boy being equal in "class, endowed with filial virtues, acquainted with the merit of peforming "obsequies to his father, and the sin of omitting them".—VIJNYA'NESWARA in the *Mita'kshara,* and VISWESWARA in the *Madana-parija'ta,* intimate, that the son made, should be an orphan¶.

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* A commentary on PARA'SARA current, in Western and Northern *India.*

† See D. Ch Sect I. § 8.

‡ 2. 120. cited in Trans. of *Mit* on Inh. Ch. I. Sect. XI. § 9. 130 133.

‖ Consult generally Trans. of *Da'ya-bha'ga.* Ch. X; and of *Mit* .on Inh. Ch. I. Sect. XI.

¶ v. Trans. of *Mit.* on Inh. Ch. I. Sect. XI. § 17. et note.

NOTE III

A son self-given, and a son rejected, (p. 147)]. These are described by MENU (v. Translation by Sir WILLIAM JONES, Ch. IX. verses 167. et seq). The author of the *Mitakshara*, and other writers provide that these sons, should be of the same tribe.

NOTE IV.

A doubt might be entertained, (p 148)]. The expression '*aputra*,'—destitute of male issue, occurring in the texts of MENU, cited, as authorities for adoption, is explained, as intending,—one whose son may have died, and one to whom no son may have been born*—The first explanation obviously, and the second by implication, may be construed as solely referring to the '*Grihi*' or married man.—Again, *Med'hatithi* declares, that the scriptural precept enjoining the production of a son, must positively in some way be fulfilled by a person of the description noticed†. These however do not appear sufficient grounds to pronounce the illegality of an adoption made, generally by a man who may not have married, or still less, one whose wife may have died. In fact, the passage in question of *Med'hátithi*, may be regarded, as merely enjoining the more obligatory necessity, for a married man, having no male issue, to adopt a son. JAGANNA'THA, in the *Viva'da-b'hanga'rnava*, or Digest translated by Mr. COLEBROOKE, expressly rejects as erroneous, the doctrine, which would restrict adoption to a man in the order of the *Grihi*‡. It may be observed that, as marriage is one the last of the perfective rites, necessary to complete the regeneration of ' the twice.born, ' celibacy is scarcely known amongst the *Hindus*. —The individuals excluded from inheritance are, " the impotent person, the outcast and his issue, one lame, a madman, an " idiot, a blind man, a person afflicted with an incurable disease, and others si- " milarly disqualified."—The admissibility of a doubt, as to the legality of an adoption, by such persons, is suggested with reference to a passage in the *Mita'kshara*, which declares, that, the specific mention of 'the legitimate son' and ' son of the wife' in a text of YA'JN'YAWALKYA, providing for the inheritance of such sons of disqualified persons, is intended to forbid the adoption, by them, of other sons§. The author of the *Dattaka Chundrika'* likewise, arguing from the same or a parallel text, that an adopted son, is not ordained for disqualified persons, excludes such son of those persons, from succeeding to the estate of the paternal gradfather||. In the absence, however, of other authorities, those alluded to, can hardly be admitted as sufficient to establish a general rule vitiating *in toto*, the adoption by one, excluded from inheritance.—In fact, the author of the *Dattaka Chandrika'*, without advancing such position, merely denies the right of one so adopted, to inherit of his adoptive grandfather, and perhaps no more was intended by the author of the *Mitákshara.*

NOTE V.

Is incapable in his own right of adoption, (p. 148)]. This position may be questioned, and does not appear to be a generally received rule. In the tract of country, denominated *Mait'hila*, a custom prevails, of the adoption, by a widow, of a *Kritrima* son, for the performance of her *Sapin'd'i-karana*, or rite of association with departed ancestors, the observance of which, on the eleventh day from her decease, exempts the other relatives, who are unable to celebrate such ceremony, from observing in her honor, (as they otherwise would have to do,)twelve monthly funeral repasts.—The practice is perhaps founded on, or justified by, the following passage from the *Dwaita-nirnaya* of

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* v. D. M. Sect. I. § 3. 4. 9. and D. Ch. Sect, I. § 3. 4.

† See D. M. Sect. I. § 60.

‡ v. Digest, Chap. IV. Sect. VIII.

§ v. Trans, of *Mit.* on Inh. Ch. II. Sect. X. § 11.

|| D. Ch. Sect. VI.

VA'CHASPATI-MIS'RA, an author of paramount authority in the '*Mait'hila*' country—" Its purpose is, for the man, that he may be excluded from the "hell denominated put;' for the woman, that some one may exist, capable of "performing her rite of *Sapin'd'ana*, or association with departed ancestors. "Should individuals, capable of promoting these objects exist, a son must "not be adopted. Accordingly, from the resemblance, to the condition of "being parents of male issue; where, the son of a whole brother may exist, "by a man, other persons,—and, where the son of a rival wife may exist, by "a female, sons made, and so forth,—must not be affiliated. To this doctrine "conform, ASAHAYA, UDAYA-KA'RA, the *Kalpataru*, the *Parijáta*, the *Rat*-"*nakára*, and other works."—This passage sufficiently explains, why the custom in question is restricted to widows. A husband is capable of performing the *Sapin'd'ana*, or *Sapin'd'i-kárana*, (for the terms are synonimous) for his deceased wife. On the same principle, should the husband leave an adoptive son, who would necessarily be filially related to his wife, the widow could not adopt a peculiar son for herself.—The son affiliated by a widow, according to the custom noticed, is not regarded, as related in any way to her husband, and merely succeeds to her exclusive property.

NOTE VI.

Though it is admitted by his sanction, she may affiliate on the part of her husband, (p. 148)]. On the subject of the adoption by a woman, this portion of a passage from VAS'ISHT'HA, is usually cited. " Let not a woman, "either give or accept a son, unless with the assent of her husband." VA'-'CHASPATI-MIS'RA, in another work, the *Sràd'dha-Chintamani* maintains, that the clause,—" unless with the assent of her husband," refers only to "the gift, and not the adoption of a son, a woman, as well as a *Sudra*, from their inability to perform the sacrifice included in the prescribed ceremony, being both incapable of adopting a *Dattaka*, or son given. In this opinion he is supported by RUDRA-DHA'RA, the author of the *Sud'hi-Viveka*, a work also current in *Mait'hila*. Both authors have perhaps, from their silence, left it doubtful, whether they allow the adoption of a *Kritrima* son, (at which no sacrifice is performed,) through the delegated agency of a wife or not: It would however be difficult to shew, that such adoption were at variance with their express doctrines.—"This objection (says Mr. COLEB-"BROOKE, in allusion to the opinion of VA'CHASPATI-MIS'RA just mentioned) "may be obviated, by admitting a substitute for the performance of that "ceremony: and accordingly adoption by a woman, under authority from "her husband, is allowed by writers of the other schools of law: NANDA "PAN'D'ITA, however in his treatise on adoption, restricts this to the case "of a woman, whose husband is living, since, a widow can not, he observes, "have her husband's sanction to the acceptance of a son. On the other hand, "BA'LAM-BHA'T'TA*, contends that, a woman's right of adopting, as well "as of giving, a son, is common to the widow, and the wife. This is likewise, "the opinion of the author of the *Vyavahára-Mayuc'ha*: but while he ad-"mits that, a widow may adopt a son without her husband's previous au-"thority, he requires that she should have the express sanction of his kindred. "Writers of the *Gaura* school, on the contrary, insist on a formal permission "from the husband, declared in his life time." It may be added, that the author of the *Viramitrodaya* concurs, in the opinion of the *Vyavahára-Mayuc'ha*, just noticed.—Of these works, the former, is more particularly current at *Benares*, and the latter among the *Marahàttas*†. NANDA PAN'-D'ITA has not omitted, expressly to disallow the ability of kinsmen to authorize a widow to adopt‡.

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* A commentator on the *Mita'kshara*.

† Mr. COLEBROOKE in his preface to the *Da'ya'bha'ga*, &c.

‡ D. M. Sect. I. § 18.

NOTE VII.

An only son, (p. 149)]. NANDA PAN'D'ITA and the author of the *Dattaka Chandrika'*, extend the prohibition to one of two brothers, and the author of the *Mita'kshara* forbids the gift of the elder of many*.

NOTE VIII.

Should assent, or being a minor, be given by a competent party, (p. 159)]. The necessity of the assent, of the object of a *Kritrima* adoption, to which, the only parties, are the adopter and adopted, is obvious: and it would be highly unreasonable, could parents affect the rights of their adult son, by giving him away against his consent.—Texts of law indeed, are not wanting, prohibiting generally the gift of a son, against his will: but it seems a correct construction, that such texts merely refer to the adult son. A minor legally can have no will.

NOTE IX.

Some difficulty exists, in extracting a consistent doctrine, (p. 150)]. BA'-LAM-BHAT'T'A†, and other authors seem to imply the necessity, of the assent of the mother, if alive and capable, to the gift by the father: and JAGANNA'-THA in the Digest, while he admits the validity of the adoption, intimates the ability of a son given, without the assent of his mother, to perform her funeral rites. NANDA PAN'D'ITA‡, VIJNYA'NESWARA§, VA'CHASPATI-MIS'RA, RUDRA-DHA'RA, CHANDESWARA, and others, who admit the legality of the adoption of a son given, without the assent of the mother, by the father, seem to restrict the independant gift by a woman of her son, to the case of the widow; and on the other hand, the author of the *Dattaka Chandrika'* includes the cases, wherein, the husband may have emigrated, or entered a religious order; and BA'LAM-BHAT'T'A provides, that the wife may give away her son, without the consent of her husband, if the distress be urgent. A provision to this effect certainly appears consistent and reasonable.—In any case, in which a question might arise, it would naturally rest with the court, assisted by *Pandits*, to determine, what special circumstances of distress or necessity, would justify or invalidate the gift of her son, by a mother without the father's consent. It may with some reason be inferred, that one adopted as a son given, under an invalid gift, who voluntarily remained as son to his adopter, might be regarded as a *Kritrima* son.

NOTE X.

Chiefly, if not solely, prevails, (p. 151)]. In a Note on Chap. X. Sect. X. of the Digest, Mr. COLEBROOKE observes, that in *Gaura* or *Bengal*, and most countries other than *Maithila*, sons are only adopted, in the *Dattaka* form. The prevalence however of such practice, should not vitiate a *Kritrima* adoption, unless indeed, it appeared such mode were expressly prohibited by works on law of paramount local authority.

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* v Trans. on Inh. Ch. I. Sect. XI. § 12.

† See Trans. *Mit.* on Inh. Note to Ch. I. Sect. XI. § 9.

‡ D. M. Sect. IV § 12.

§ Trans. of *Mit.* on Inh. Ch. I. Sect. XI. § 9.

NOTE XI.

The doctrines, of the Dattaka-Mímánsá, *and* Dattaka-Chandriká (p. 151)]. The following appears to be that of NANDA PAN'D'ITA, from his elaborate and intricate gloss on the passage referred to, which is attributed to the *Kálika-purána.** The most preferable object for adoption is a child, wholly uninitiated: his filial relation proceeds from the performance, by the adopter, of initiatory rites. Next in rank to him, is one initiated as far as tonsure exclusive, for the performance of which, the period from the third to the fifth year is prescribed. Inferior as an object of adoption, is one, whose tonsure has been performed, by his natural father, who, provided he be under six years of age, may be adopted, and acquires filial relation to the adopter, on the performance by that person, of the different initiatory rites, preceded by a sacrifice for male issue (*putreshti.*) Such son, from his having been initiated in tonsure and other rites, in both families, is a *Dwyámushyáyana*, or son of two fathers. It is to be observed, that NANDA PAN'D'ITA, in the abstruse gloss noticed, seems to have betrayed himself into an inconsistency. According to his explanation, if the boy proposed to be adopted, have not been initiated in the rite of tonsure by his natural father, he can not be adopted after having attained his fifth year: if however, he has been so initiated, he may be affiliated, (provided he be under six years of age,) a sacrifice and so forth being observed as already noticed.—The subjoined appears to be the substance of the doctrine in the *Dattaka-Chandriká*, resulting from the most abstruse part of the work†.—1st. The most preferable object for adoption, is one, for whose *upanayana* rite, the prescribed principal season, has not elapsed: the previous rites performed by the natural father, are not to be renewed. Such son becomes filially related by the mere performance of the rite in question.—2nd. Inferior as an object of adoption, is one, for the performance, of the *upanayana* rite on whom, the principal season has elapsed. In the case of such adoption, the sacrifice for male issue must be observed, and the rites of tonsure and the rest, be performed by the adopter, on the adopted.

NOTE XII.

The most general and consistent rule, which presents itself, (p. 151)]. This is stated, with reference to a text of VAS'ISHT'HA, and the supposed doctrine of the *Dattaka-Chandriká*, detailed in the preceding note, and founded on that text. This intimates, that the son given, by initiation in the rite of *upanayana*, in the family of the adopter, becomes a member of that family. Supposing the rule suggested to be accurate, it would remain to be determined, what circumstances would constitute a disqualification, to the performance, by the adopter, of the rite in question, on the adopted.—The author of the *Dattaka-Chandriká* has left it doubtful, whether in his opinion, the celebration of that rite, by the natural father, would be an insuperable bar to its re-performance by the adopter, and hence to adoption: or, in the same manner, as the rite of tonsure, it might be renewed by the adopter in his own family.—Another question would likewise arise, whether, even after the expiration of the secondary season for the celebration of the rite in question, as provided in the case of the natural father, the adopter, by observing certain penances, might not derive ability to perform the rite in question. A determination of these points in the present compilation, could not, without presumption be attempted. It may, however, be remarked, that it ap-

* v. D. M. Sect IV. § 22. ad 54.

† v. D. Ch. Sect. II. § 20. ad 33.

pears more reasonable to suppose, that the celebration in the family of his father, of so important a rite, as the *upanayana*, or the expiration of the secondary period, prescribed for the performance of that ceremony, should constitute an impediment to the adoption, of a son given, by precluding the capability of the rite referred to, being celebrated in the family and name of the adopter.

NOTE XIII.

They seem however agreed, (p. 152)]. "The representation to the king, "and invitation of kinsmen, are for the sake of, attestation, and removing "doubts, as to the right of inheritance, and not intended as any legal essen- "tial" (RUDRA-DHA'RA in the *Sud'hiviveka)*—"'Having convened kinsmen' "—This is for the sake of the succession of the adopted son (*dattaka*)."— VA'CHASPATI-MIS'RA in the *Srádd'ha-Chintámani*.—So also in the *Viva'da-Ratna-kára* of CHANDESWARA.

NOTE XIV.

As referring exclusively to the son given, (p. 152)]. In the forms propounded by SA'UNAKA, and the rest, allusion is made in express terms to the son given; and that, prescribed by VAS'ISHT''HA, is directed, after advertence to the sons given, bought, and deserted. NANDA PAN'D ITA insists, that these forms refer to the other adopted sons, as well as the son given,* and the general application, of the latter form, is intimated in the *Mita'kshara*.† The author of the *Sud'hi-viveka* however, as well as those of the *Sradd'ha-Chinta'mani* and *Viva'da-Ratna-kara*, introduces the form, propounded by VAS'ISHT''HA, under the head of the son given, as merely applicable to that description of son; and BA'LAM-BHAT'T'A, commenting on the passage of the *Mita'kshara* referred to, in the case of a *Kritrima* adoption, excepts the sacrifice or burnt offering directed in the text of VAS'ISHTHA. It has been intimated, that the other parts, are no legally essential portions of the form, propounded by the author in question.

NOTE XV.

The adoption of a Kritrima *son being, &c.* (p. 152)]. The adoption of a *Kritrima* son is chiefly prevalent in the *Mai'thila* country; and is rarely practised in other parts of *India*.—"The practice (says Mr. COLEBROOKE) "of adopting sons given, by their parents, was there abolished by SRI'-DATTA "and PRATIHASTA, although, the latter had been himself adopted in that "manner. Their motive was, lest a child already registered in one family, "being again registered in another, a confusion of families and names should "thence ensue. A son adopted in the form so briefly noticed in the present "section, does not lose his claim to his own family, nor assume the surname "of his adoptive father: he merely performs obsequies and takes the inheri- "tance."‡—The Translator is informed that SRI'-DATTA and PRATIHASTA have not abolished the practice noticed in their written works. A case, of the nature alluded to, had occurred: in consequence, a general assembly of

* See D. M. Sect. V. § 41. 50. &c.
† See Trans. of *Mit.* on Inh. Chap. I. Sect. XI. § 15.
‡ Note to Chap. IV. Sect. X. of the Digest.

Brahmans was held, at which, the celebrated *Pandits* mentioned presided, and it was there agreed, that for the future, the practice of the *Dattaka* adoption should be discontinued. But though, this mode of adoption does not accordingly now prevail in the *Mait'hila* country unforbidden, as it is, by VA'CHASPATI-MIS'RA, and the best writers there current, it is not to be inferred, that, if in any case preferred, such mode of affiliation, would be illegal.

NOTE XVI.

Valid without the observance of any particular form, (p 152)]. In treating on the *Kritrima* son, RUDRA-DHA'RA in the *Sud'hiviveka*, adds,— "The form to be observed is this. At an auspicious time, the adopter of "a son, having bathed, addressing the person to be adopted, who has also "bathed, and to whom he has given some acceptable chattel, says, 'Be my "son.' He replies. 'I am become your son.' The giving some chattel to "him, rises merely from custom. It is not necessary to the adoption. The "assent of both parties is the only requisite; and a set form of speech is not "essential."

NOTE XVII.

The Kritrima *son in some instances may, but in all need not, &c.* (p. 152)]. It would appear, that the *Kritrima* son, as usually affiliated in the *Mait'hila* country, is not initiated in any rites in the family of his adopter. That, in some cases, such rites, might be legally performed by the adopter may however, be inferred.—1st. In the dubious passage of the *Ka'lika-pura'na*, the performance of initiatory rites, in the family of the adopter, is declared to be necessary in the case of all adopted sons.—2nd. If the complete induction of the adopted son, into the family of the adopter, be contemplated, the necessity of the observance of those rites, should apply as much to the one adoption as the other. Important distinctions, would probably obtain, between *Kritrima* sons, who had or had not been initiated in the family of their adoptive fathers, as will be presently noticed.

NOTE XVIII.

The Kritrima, *in some instances may be, invested with every filial right,* (p. 153)]. Consult the preceding two notes. The *Kritrima* son, as usually affiliated in the *Mait'hila* country would indeed take the estate of his adoptive father, but continues a member of the family of his natural father, and is not regarded as prolonging the line of his adopter.

NOTE XIX.

This rule would not apply to the Kritrima *adopted son, &c.* (p 153)]. In respect to this rule, it may be first observed, that BA'LAM-BHAT'T'A provides generally, that the given son, is competent to inherit the estate, and perform the obsequies of his natural father, should he have no other male issue*. The rule in question, is founded on a text of MENU†, in which, the son given only,

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* v. Trans. of *Mit.* on Inh. Note to Ch. I. Sect. XI. § 32.
† Cited in D. M. Sect. VI. § 6.

is mentioned. In the *Mita'kshara*, it is incidentally stated, that the mention, of the given son, in this text, is intended for any adopted son; but, it by no means appears, that, this is a generally received exposition, and could only hold, in certain cases, (if any such might occur,) where, the adopted son, were an orphan or tacitly relinquished by his parents, and solely, and exclusively initiated, in the name and family of the adopter. It would certainly be inconsistent with the principles of *Hindu* law, could the filial relation, towards the father, without any act on his part, be divested from the son. In the case of the *Kritrima* adopted son, as usually affiliated in *Mait'hila*, no doubt as to his retaining relation to the family of his natural father, can exist.

NOTE XX.

But likewise lineally and collaterally, (p 153)]. This position, obviously resulting from adoption. is supported by the *Mita'kshara**. A doubt indeed, with reference to passages in the *Dattaka-Mimansa'*,† and *Dattaka-Chandrika'*,‡ may be entertained, as to the accuracy of this position, as a general and unrestricted rule. It however appears, more reasonable to construe those passages. as well as authorities,—on which they are founded, and which declare the relation. of the adopted son, as *Sapin'd'a*, in the family of the adopter, to extend to three degrees only,—as referring merely, to the oblation of the funeral cake impurity on occasions of deaths and births, and disability of marriage in the family of the adopter. This in fact is intimated by NANDA PAN'D'ITA.§

NOTE XXI.

Would not apply to the Kritrima *son, as usually, &c.* (p. 153)]. In the *Dwaita Nirnaya*, VA'CHASPATI-MIS'RA declares, that no relation obtains, between the *Kritrima* adopted son, and the father of the adopter. From which, it is to be inferred, that such adopted son could not inherit of that person, and *a fortiori*, from the collateral kinsman of the adopter. The same inference in fact, results from the circumstance of the *Kritrima* son in question, not being considered, as a member of his adopter's family.—It may however be concluded, that, where the adopter might die in family-co-parcenary with his father and brethren, his *Kritrima* son, would be entitled to receive on division his share.

NOTE XXII.

Receives a quarter share, (p. 154)]. This rule is founded, on texts of VAS'ISHT''HA and KATYA'YANA‖. The latter of which however is variously read. 'A third part' is substituted by some, for the more prevalent reading, 'a fourth part:' the difference being adjusted, with reference to the qualities of

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* v. Trans. on Inh. Ch. I. Sect. XI. § 30, 31.

† D. M. Sect. VI. § 32. et sev.

‡ D. C. Sect. III. § 18, 19, 20.

§ D. M. Sect. VIII.

‖ Cited respectively in D. Ch. Sect. V. § 16, 17.

the claimants. It is not easy to determine, at least satisfactorily, the exact right conferred on the adopted son, by the exprssion, '*chaturt'h'a'ns'a*' (a fourth part or quarter share). If it be contended, as it perhaps justly may, that, by the expression in question, a specific share of the whole estate, is assigned to the adopted son, a great inconsistency would result.—Where, a division of heritage might take place between an adopted son, and several legitimate sons, subsequently born, the share of the former, would, in some instances exceed those of the latter. This objection, might be obviated, by adopting, the exposition of NANDA PAN'D'ITA, who explains the terms referred to, as signifying 'a quarter share; not an entire share:*' intimating probably thereby, that the adopted son, under the circumstances proposed, should receive the fourth of the share, which would be allotted to him, supposing him to be a real legitimate son. Thus, if 1700 *Rupees* or *Beegahs*, were to be distributed, between one adopted, and four real legitimat sons, subsequently born, the portion of the former, would be 85, while each of the latter, would take 403,75; or perhaps, the objection stated might be more satisfactorily obviated, by construing the expression, 'a fourth part or quarter share,' to signify, the fourth of the share, received by a legitimate son.—Thus in the case supposed, the share of the adopted would be 100, and those allotted to each of the legitimate sons 400.

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* D. M. Sect. V. § 40.

FINIS.

ABBREVIATIONS USED IN THE APPENDIX.

Decs. N. W. P.. .Decisions of the Sudder Dewanny Adawlut of the North Western Provinces.

Borr.. ... . .Reports of cases decided by the Sudder Dewanny Adawlut of Bombay by Borrodaile.

Dec. of M. S. U..Decrees in Appeal Suits determined in the Court of Sudder Udalut (Madras.)

Ind. App. ...... .Moore's Indian Appeal Cases decided by the Privy Council.

M. S. U. Decs.. ..Decisions of the Sudder Udalut (Madras.)

P. C. Cases.. .... .A collection of Printed cases with the Judgments of the Privy Council appended.

S. D. A... .. ,.. . .Decisions of the Sudder Dewanny Adawlut of Calcutta.

Str... .... .Strange's Reports of cases decided by the Supreme Court, Madras.

W. R... .... .Sutherlands Weekly Reporter.

K. P. D... .... .Knaps Privy Council Decision.

M. C. H. L...... .. .Montrion's cases of Hindu Law.

H. H. D.. .... .Hay's High Court Decisions.

APPENDIX.

CONTAINING A DIGEST OF REPORTED CASES ON POINTS RELATING TO HINDU LAW.

(1.) RIGHT OF ADOPTION AS REGARDS GIVER AND RECEIVER.

1. A widow may adopt a son with the consent of her husband or her relatives.—*Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah*.—Case No. 18 of 1841.—1. Dec. of M. S. U. 101.—Scott, Greenway and Stratton.

2. The consent of the husband may be given by a writing mentioning the name of the child to be adopted and of its parents or leaving the child to be afterwards fixed upon.—*Id.*

3. A widow may legally adopt a son without the consent of her husband, if she have obtained permission of the caste and the sanction of the ruling power.—*Sree Brijbhookunjee Muharaj* v. *Sree Gokoolootsasjee Muharaj*.—5th November 1817.—1 Borr. 181.—Sir E. Nepean, Nightingall and Bell.

4. And having obtained such permission she must adopt the nearest of kin to her late husband ; but if there should be two persons equally near, she may adopt either.—*Id.*

5. A widow is competent to adopt, even without the injunction of her husband, the son of her husband's brother, and he therefore succeeds to the property of her late husband. But she cannot adopt any other but her husband's brother's son during his existence ; nor, as it appears, can she adopt any other but such son without the consent of her husband.—*Hulbut Rao Mankur* v. *Govind Rao Bulwant Rao Mankur*.—1st Sept. 1823. —2 Borr. 75,—Barnard.

6. A female, under the law of *Alya Santan*, cannot adopt if she have male issue living.—*Cotay Hegady* v. *Manjoo Kumpty and others*.—10th August 1859.—M. S. U. Decs. 1859, p. 138. —Hooper, Strange and Phillips.

7. The second adoption of a son, the first adopted son being alive and retaining the character of a son, is an illegal and void act (*a*).—*Rungama* v. *Atchama and others.*—29th February 1848. —Ind. App. vol. IV. p. 1.

8. A second adoption being invalid by cause of the existence of the son first adopted, no change of circumstance, such as the demise of the son first adopted, could render the said invalid adoption a valid one.—*Basoo Camumah* v. *Basoo Chinna Vencatasa.*—13th February 1856.—M. S. U. Dec. 1856, p. 20.—Hooper, Morehead and Strange.

9. A Hindu cannot adopt a son, he having already an adopted son and a son born.—*Yachereddi Chinna Bassapa and others* v. *Yachereddi Gondappa.*—4th December 1835.—3 P. C. Cases, case 5.

10. Adoption made during the pregnancy of the wife of the adopter is void, it being of the essence of the power to adopt, that the party adopting should be hopeless of having issue.—*Narayana Reddi and another* v. *Vedachala.*—8th Aug. 1860.—M. S. U. Dec. 1860, p. 97.—Strange and Beauchamp.

11. One brother cannot give another in adoption, for brothers stand on an equality and one has no right over another thus to dispose of him.—*Muttusawmy Naidu* v. *Lutchmeedavumma and others.*—30th August 1852.—*Id.* 1852, p. 96.—Inglis.

12. A Hindu having properly adopted a son, cannot disinherit him, even for bad behaviour, nor can he adopt another son.—*Daee* v. *Motee Nuthoo.*—6th October 1813.—I Borr. 75.—Nepean, Brown and Elphinston.

13. But should a man take another for the purpose of adoption and change his mind before the full performance of the ceremony for adoption, he is at liberty to put him aside and to adopt any other whom he may choose.—*Id.*

14. The legality of an adoption cannot be challenged by one who has consented to it.—*Pillari Chetti Samudrala Naidu* v. *Rama Lakshmama*—4th Aug. 1860.—M. S. U. Dec. 1860, p. 91.—Strange and Beauchamp.

(*a*) All the authorities relating to this point are quoted and contrasted in the Report of this case by Moore.—*Mor. Dig.*

15. Although a wife may not have obtained her husband's consent during his life to give their child in adoption, she can, after her husband's death and with the concurrence of father, brothers, &c. give her younger son in adoption.—*Arnachellum* v. *Iyasawmy*] *Pillai.*—Case No. 5 of 1817.—1 Dec. of M. S. U. 154.—Scott, Greenway and Ogilvie.

16. If a man and his wife have agreed in writing to adopt a child and one of them die, the survivor must fulfil the engagement: the agreement is not rendered void by the death of one of the parties.—*Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*—Case No. 18 of 1814.—*Id.* 101.—Scott, Greenway and Stratton.

17. If the husband, at the time of his death, refer to an agreement entered into with his wife to adopt a child, the wife is authorized thereby to adopt the child mentioned in such agreement.—*Id.*

18. Whether the name of a child and of its parents be mentioned in an agreement of adoption in order to identify it, or, to know whose child is referred to, the name of the mother or the tribe from which he is descended be named, the agreement is binding in law.—*Id.*

19. If a Hindu, by will express a wish to be represented by an unborn son of a particular person, who has but one at the time, and who has no other living at the death of the testator, his widow is not bound to wait indefinitely the birth of a second for the purpose of adoption under her husband's will; but may, without waiting, adopt any competent person she thinks proper.—*Verapermall Pillai* v. *Narrain Pillai and others.*—5th August 1801.—1 Str. 91.

20. The adoption made by a widow, without authority from her husband, [the *Anumuti-putr*, or deed of permission, exhibited by her, as granted by her husband, appearing to have been fabricated,] declared to be of no effect against a testamentary deed executed by the husband in favor of his younger brothers, whereby his share of the joint estate was bequeathed to them after the death of the widow, with a declaration that he had not given her permission to adopt a son. Musst. Jankee

Dibeh *versus* Suda Sheo Rai and another, 17th July 1807, S. D. A. v. I. p. 197

21. By the Hindu law, there may be two successive adoptions, under due authority for that purpose, by the widows of the same man. Sham Chunder and another *versus* Narainee Dibeh, 21st August 1807, S. D. A. v. I. p. 209.

22. Authority to a wife to adopt, in the event of disagreement between her and the son of her husband then living, will not avail; the authority to adopt in the event of the son's death would be valid. Musst. Soolukhna *versus* Ram Doolal Pandeh and others, 27th May 1811, S. D. A. v. I. p. 324.

23. A childless Hindu, having two wives, gives each permission to adopt a son. After having himself adopted a son on behalf of the senior wife, he confirms the permission originally granted to the second wife. The son adopted in consequence by her after her husband's death, takes the inheritance jointly with the son adopted by the husband on behalf of the senior wife. Gouree Pershad Rai *versus* Musst. Jy Mala, 12th December 1814, S. D. A. v. II. p. 136.

24. According to the Hindu law as current in Benares, an adoption made by a widow without authority of her husband is illegal, though she may have obtained the consent of the husband's heirs, and does not entitle the person so adopted to the succession to the husband's estate. Raja Shumshere Mull *versus* Ranee Dilraj Koor, 31st January 1816, S. D. A. v. II. p. 169.

25. While a brother's son exists, the adoption of any other individual as son, either in the *Dattaca* or *Kritrima* form of adoption, is invalid. [But see No. 41 *infra*, and the case to which it refers]. Ooman Dutt *versus* Kunhia Singh, 15th April 1822, S. D. A. v. III, p. 144.

26. A son adopted by a widow, with the permission of her late husband, has the rights of a posthumous son; so that a sale made by her, to his prejudice, of her late husband's property, unless under circumstances of inevitable necessity, will not be valid. Ranee Kishen Munee *versus* Raj Oodwunt Singh and another, 24th June 1823, S. D. A. v. III. p. 228.

27. In the case of an adoption made by a widow, without having obtained the consent of her husband, and in which the adopted son shall not have been delivered over to her by either

of his parents, but only by his brother, the Court will not hold the adoption valid. Musst. Tara Munee Dibea *versus* Deb Narain Rai and others, 10th July 1824, S. D. A. v. III. p. 387.

28. By the Hindu law applicable to Behar, held in conformity with the opinion of the *pundits*, that the permission of the husband is absolutely necessary to legalize adoption by the widow in the *Dattaca* form, and that leave from her husband's kindred will not be sufficient. Jai Ram Dhamu *versus* Moosun Dhamu, 14th January 1830, S. D. A. v. V. p. 8.

29. The *Jain* shasters recognize the hereditary right of an adopted son; and by them, a widow is competent to adopt without the sanction of her husband, and the disqualifying age is said to extend to the 32nd year. Rajah Govind Nat Rai *versus* Gulal Chand and others, 23rd March 1833, S. D. A. v. V p. 276.

30. Notwithstanding what is stated at page 102, volume I of Macnaghten's Hindu law, the adoption of the daughter of a brother, with the condition that her eldest son shall be the *patrica putra* [son of a daughter] of the adopted, is legal. But it is essential to the validity of the adoption, that it taken place previous to her marriage. Nuwab Rai *versus* Buggawuttee Koor and others, 6th January, 1835, S. D. A. v. VI. p. 5.

31. A Hindoo widow cannot, on the death of one adopted son, adopt another without special permission to do so. Gournauth Chowdhree and others *versus* Arnopoorna Chowdrain, 27th April 1852, S. D. A. p. 332.

32. A power to adopt cannot be given by a disqualified land-holder without the consent of the Court of Wards, on application made to them through the collector. A deed giving a power to adopt rejected, as unworthy of credit, the circumstance of its alleged execution being suspicious, and its non-production for many years being unaccounted for. Neelkaunt Dutt and others *versus* Anundmoye Chowdraine and others, 30th April 1855, S. D. A. p. 218.

33. A Hindoo father, before the birth of a son empowered his wife to adopt a son. On the subsequent birth of a son, he again, to provide against the contingency of the Child's death, renewed the power to his wife to adopt a son. Held by a

majority of the Court that the power of adoption set up by appellant as granted to his mother was conditional; that the conditions contemplated had not occurred; and therefore that the deed by its terms did not supersede the legal right of the natural son, so as to restrain him from authorising his widow to adopt a son who should succeed to the ancestor's estate. Held also, apart from the construction of the deed that it was not legally competent to the ancestor to restrain his son from empowering his widow to adopt a son as heir to the ancestral estate. Ramkishore Acharj Chowdree *versus* Bhoobunmoyee Debea Chowdrain and others (page 122) S. D. A. 30th January, 1858.

34. Adoption may be made, either by a man in his life time, or by his widow, after his death, under a power conferred on her for that purpose by her husband. Huradhun Mookurjea *v.* Mothoranath Mookurjea 15th February 1849 (Moore's Indian Appeals Page 414).

35. A verbal power to adopt is good by the Hindoo law. Soondur Koomarree Deby *versus* Gudadhur Pershad Tewarree 11th February 1858. (Moore's Indian Appeals page 54) v. VII.

36. A Hindoo woman, taking no steps to adopt until the death of the last male member of her husbands' family, forfeits her claim to adopt. Gobind Soondaree Debia *versus* Joggo Dumba Debia. 29th May 1865 (W. R.) (H. C. D) page 66 v. III.

(2.) PERSON TO BE ADOPTED.
(*a.*) GENERAL.

37. The adoption of a married man, though of the Sudra caste, is illegal and void.—*Chetti Colum Prusunna Vencatachella Reddiar* v. *Chetti Colum Mudu Vencatachella Reddiar.*—Case No. 7 of 1823.—1 Dec. of M. S. U. 406.—Cochrane and Gowan.

38. An orphan cannot be given in adoption.—*Muthusawmy Naidu* v. *Lutchmeedavumma and others.*—30th August 1852.—M. S. U. Dec. 1852, p 96.—Inglis.

36. As a general rule the adoption of an eldest or only son is an act alien to the principles of Hindu Law. Such adoption however when made by a paternal uncle, but by none other, is sustainable (a)—*Permal Naicker and another* v. *Potteeammaul and others.*—29th Nov. 1851.—M. S. U. Dec. 1851, p. 254. —Hooper and Strange.

40. The adoption of an only son is, when made, valid according to Hindu Law.—*Chinna Gaundan* v. *Kumara Gaundan* —10th Nov. 1862.—1. M. H. C. Reps. 54.—Scotland and Frere.

41. The adoption of an eldest or only son is improper but not invalid. If a man have two wives, and by the first one son, and by the second several, the elder of those by the younger wife may be given and received in adoption.—*Veerapermall Pillai* v. *Narrain Pillai.*—5th Aug. 1801.—1 Str. 91.

42.—The *Dwyamushyayana* form of adoption is not recognized in the present age.(b).—*Annamala Auchy* v. *Mungalum and others.*—23d March 1859.—M. S. U. Dec. 1859, p. S1.—Hooper, Strange and Phillips.

43. The adoption of an only son is invalid under the same *shasters*, unless the natural father deliver the son to the adoptive father on condition that he shall belong to both as a son, and the latter accept and adopt him as such: in this case the adoption is good, and the adopted son is denominated *dwyamushyayana*, or son of two fathers. Raja Shumshere Mull *versus* Raneee Dilraj Koor, 31st January 1816, S. D. A. v. II. p. 169.

44. Nund Ram and others *versus* Kashee Pandeh and others, 30th June, 1825, S. D. A. v. IV. p. 70.

45. According to the Hindu law current in Behar, an only son cannot be given or received in the *Dattaca* form of adoption. Nund Ram and others *versus* Kashi Pandeh and others, 30th June 1823, S D. A. v. III p. 232.

46. In the case of a Hindu of Bengal dying in his father's life-time without issue, but leaving his widow authorized to adopt a son; if such adoption be made with the knowledge and

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(a) This is an important decision, the question having been gone into by the late Sudder Udalut for the express purpose of authoritatively deciding it. In a more recent case, pl. 24, the Madras High Court also fully entered into the question and held that the adoption of an only son is valid.

(b) See pl. 23, 24, and 25.

consent of her deceased husband's father, at any time before he shall have made any other legal disposition of the property, or a son shall have been born to his daughter in wedlock, no such subsequent disposition, or birth, shall invalidate the claim of the son, so adopted, to the inheritance. Ram Kishen Serkheyl *versus* Musst. Srimutee Dibea and others, 19th June 1824, S. D. A. v. III. p. 367.

47. A and B, Hindu widows, recovered at law their husband's share in a joint estate, on a gift from him and acknowledgments from his brothers. They had obscurely associated with them in the plaint the minor C, as an adopted son; but the fact and legality of his adoption were disputed and not investigated. The judgment passed is construed as not conclusive in regard to the reversion, and as not establishing an unimpugnable right in C; and in defect of his title shown, and the proved right of D D recovers. Baboo Sheo Manog Singh *versus* Baboo Ram Perkas Singh, 24th September 1831, S. D. A. v. V. p. 145.

48. A permission given for such adoption as co-heir, cannot be converted into a permission for the distinct purpose of the adoption of a son after the death of the natural son, living at the date of permission. Joy Chundro Raee *versus* Bhyrub Chundro Raee and others, 18th December 1849, S. D. A. p. 461.

49. A woman, after her husband's death, is incompetent to give her only son in adoption, as a *Dwyamushyayana*, or son of two fathers, without authority previously given by her deceased husband. Debee Dyal and another *versus* Hurhor Singh, 29th December 1828, S. D. A. v. IV. p. 320.

50. Under the precedents of the Sudder Court, the adoption of the eldest son, though improper, is nevertheless not illegal. Sitaram *versus* Dhonookdhare Sahye 2nd September, 1862 (Hay's Report page 260) H. C. D.

51. Held, that according to Hindoo Law (Mitachara School) the second adoption, in the life time of the first adopted son is invalid. Sudanund Mohapattur *versus* Bonomally and others, 28th February 1863 (Hay's Report Page 205) H. C. D.

(*b*.) RELATION.

52 The adoption of a party by his natural brother is invalid. —*Muthusawmy Naidu* v. *Lutchmeedavumma*.—30th August 1852 —*Id*. 1852, p. 96.—Inglis.

53. It is not lawful, and consequently not incumbent on a man, to adopt the only son of his brother in preference to the youngest son of his paternal uncle; but if such adoption take place it is valid.—*Arnachellum Pillai* v. *Iyasawmy Ptllai.*—Case No. 5 of 1817.—1. Dec. of M. S. U. 154.—Scott, Greenway and Ogilvie.

54. Where no legal bar exists to the marriage between the adopter and his adopted son's mother in her maiden state, the adoption of a brother-in-law is not opposed to the principles of Hindu Law.—*Kristniengar and others* v. *Venamamalai Iyengar.* —24th Dec. 1856.—M. S. U. Dec. 1156, p. 213.—Anderson. Goodwyn and Harris.

55. The adoption of a wife's brother is valid.—*Runganaigum and another* v. *Namasevoya Pillai and others.*—29th April 1857. —*Id* 1857, p. 94.—Hooper, Morehead and Goodwyn.

56. Held, that the adoption of a brother's eldest son by another brother's widow would, under Hindoo law, be invalid. Jugbundoo Runsing, *versus* Radhasham Norendro Mohapattra. 30th November 1859 (page 1.56) S. D. A.

57. Adoption by a childless Hindoo of the Vaisyas, or third class of Hindoos of his sister's son upheld. Panalinga Reliea *versus* Sodasibah Peliea (Moore's Indian appeals) 4th February 1864. p. 506.

(c.) AGE.

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58. The age at which a child may be adopted, is not the same in every caste. A child may be adopted from the twelfth day after his birth to the day of the Upanayana or his investure with the sacred thread worn across the body. The time for performing this ceremony is for Brahmins within their eighth year of age; for Chastriyas within their eleventh; and for Vaidyas within their tenth. Upanayana does not attach to Sudras; and, therefore, the limit for them is the period of marriage or the sixteenth year of their age.—*Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*—Case No. 18 of 1814. —1 Dec. of M. S. U. 101.—Scott, Greenway and Stratton.

59. The rule which requires Upanayana to be performed among Brahmins within the age of eight years, is merely directory, and the ceremony will not be vitiated though performed at a later period.—*Streenevassien* v. *Sashyummal.*—16th July 1859.—M. S. U. Decs. 1859, p. 118.—Hooper, Strange and Phillips.

60. The adoption of a Brahmin is valid if made before the Upanayana has been performed, though the boy may have passed the age at which that ceremony ought, according to strict rule, to be accomplished.—*Id.*

61. The adoption of a boy of above 5 years of age, though the selection be not laudable, is valid according to the Hindu law of Bengal, provided the initiatory ceremonies have been performed in the family of the adopter, and not in that of his natural father. Keerut Nurain *versus* Musst. Bhobinisree, 6th September 1806, S. D. A. v. I. p. 161.

62. The age of five does not limit the period of eligibility for adoption. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, S. D. A. v. V. p. 50.

63. The adoption of a sooder boy, otherwise eligible in *Bengal*, is permissible at any age previous to his marriage. Ranee Nitradaye *versus* Bholonath Doss, 23rd June 1853, S. D. A. p. 553.

64. Suit by A, as adopted by B, under a power of adoption granted by her deceased husband C, to succeed to his estate on death of D, the natural born son of C.

65. Admitting Plaintiff to have been of the age of twelve years at the time he was given in adoption, held, that he being a brahmin, and the nephew of his adopted father, the initiatory ceremony of investiture not having been previously performed, his adoption was valid. Ramkishore Acharj Chowdree, *versus* Bhoobunmoyee Debea Chwdrain and others (page 229.) 7th March 1859. S. D. A.

66. By the usages of the sect of surogees, adoption at the age of nine years is valid, and that on the death of an adopted son without issue, during the life time of the adopted mother, the father's right of adoption rests in the widow and not in the mother. Mussamut Chemne Baee and others *versus* Gutto Baee 2th September 1863—Page 636. N. W. P. Report.

(3.) FORM AND MODE.

67. Publicity, if not absolutely essential to the validity of an adoption, is always sought on such occasions.—*Rajah Vassereddi Ramanadha Baulu* v. *R. V. Jugganadha Baulu*.—4th March 1832.—1. Dec. of M. S. U. 520.— Bird and Huddleston.

68. The presence of the natural and adoptive mother is not necessary to give validity to an adoption by Sudras, nor burnt offerings, nor drinking of saffron water by other than the adopting father.—*Alvar Ammaul* v. *Ramasawmy Naiken*.—6th September 1841.—2 Dec of M. S. U. 67.—Campbell.

69. In the case of dancing girls, recognition as daughter suffices to constitute adoption without any formal act thereof.—*Vencatachellum* v. *Venkatasawmy*.—23d April 1856.—M. S. U. Dec. 1856, p 65.—Hooper, Anderson and Strange.

70. A zemindar of *Tirhoot* adopted one of his kindred by a verbal declaration in the presence of witnesses, but without any religious rite or ceremony; and the person so adopted was acknowledged, after the zemindar's death, as his heir, at the obsequies. Held, that this adoption is good; and that the son adopted [*Kritrima* or *Kurtapootr*] takes the inheritance exclusively, property, real and personal, hereditary and acquired. Kullian Singh *versus* Kirpa Singh and others, 23rd April 1795, S. D. A. v. I. p. 9.

71. In the *Kritrima* form of adoption, peculiar to the provinces of *Mithila*, the express consent of the person nominated must be obtained, during the life time of the adoptive father: the offer to adopt, as being the act of one of the parties only, and as being merely a proposal to enter into a contract, being held insufficient to give validity to the transaction. Musst. Sutputtee *versus* Indranund Jha, 2nd April 1816, S. D. A. v. II. p. 173.

72. In Hindu authorities on adoption, the convention of kin and representation to the *raja* are mentioned as part of the procedure, but not as essential of validity. But the *Yajna*, or sacrifice, is such essentials; not so the assent of the wife of the adopter. Alunk Manjari *versus* Fukeer Chand Sircar, 11th September 1834, S. D. A. v. V. p. 356.

73. Agreeably to the Hindoo Law current in *Mithila*, the adoption of a sister's son, according to the *Kritrima* form of adoption is legal. Chowdry Purmessur Dutt Jha *versus* Hunooman Dut Ray and others, 18th December 1837, S. D. A. v. VI. p. 192.

74. An alleged *Dattaca* adoption, by a person in a state of insensibility from dangerous illness, by verbal declaration, and without performance of prescribed ceremonies, ruled to be illegal and invalid. Bulluba Kant Chowdry *versus* Kishenpria Dossia Chowdrayn, 16th January 1838, S. D. A. v. VI. p. 219.

75. The agreement of both parties is essential to the validity of an adoption according to the *Kritrima* form. Durgopal Singh and another *versus* Roopun Singh and others, 3rd September 1839, S. D. A. v. VI. p. 271.

76. Adoption of a son as co-heir with a son living and retaining the character of a son, is invalid. Joy Chunder Raee *versus* Bhyrub Chundro Raee and others, 18th December 1849, S. D. A. p. 461.

77. Adoption of a son held to be proved on strong circumstancial evidence, in the absence of direct proof of the performance of the necessary ceremonies. Perkash Chunder Roy and others *versus* Dhunmonee Dasseea and others, 24th January 1853, S. D. A. p. 96.

78. The Court when it is satisfied that permission to adopt existed, will exact slight proof of the performance of ceremonies; but it cannot, conversely from the observance of ritual forms, infer that the husband's authority has been really obtained. Radhamadhub Gossain, *versus* Radhabullub Gossain 17th September 1862 (Hay's Report page 311) H. C. D.

79. The Hindoo law does not allow of the adoption of *Paluk Putro*. Kally Chunder Chowdree, *versus* Shib Chunder 12th April 1865 (W. R. vol. II. page 281.)

80. Requisites and ceremonials of adoption: rights of adopted son where a son of the body afterwards born. Gopeemohen Deb *versus* Sree Rajkrista Deb and others. Page 381.—M. C. H. L.

81. An adoption by a widow after her husbands death, without any authority from him, is invalid in the Zillah of Etma

in provinces ceded by the Nobob of Oude in 1801. Raja Haimun Chull Sing *versus* Koomar Gunsheam Sing. 4th June 1834 Knapp's Report volume II page 203.

(4.) EFFECT.

82. An adopted son forfeits all right of inheritance in his natural family.—*Appaniengar* v. *Alemalu Ammaul.*—6th January 1858.—M. S. U. Dec. 1858, p. 5.—Hooper, Baynes and Goodwyn.

83. Adoption does not remove the bar of consanguinity operating against the inter-marriage within the prohibited degrees. —*Multia Mudali* v. *Uppon Vencata Charry.*—11th August 1858. —*Id.* p. 117.—Hooper, Strange and Baynes.

84. The share of an adopted son is one-fourth of the share of a son born to the adoptive father after the adoption.—*Ayyavu Muppowar* v. *Niladatchi Ammaul and others.*—1st November 1862.—1. M. H. C. Reps., p. 45.—Strange and Frere.

85. A son adopted by the *Dattaca* form of adoption which is in use in *Bengal,* into another family, is thereby excluded from inheritance in his own family. Sri Nath Serma *versus* Radha Kunt, 24th November 1796, S. D. A. v. I. p. 15.

Dutt Nurain Singh *versus* Ajeet Singh, 14th February 1799, S. D. A. v. I. p. 20.

86. Tonsure performed in the family of the natural father, after gift, has no vitiating effect. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, S. D. A. v. V. p. 50.

87. An adopted son has an absolute vested interest only from date of actual adoption. Musst. Tareenee *alias* Shaye Monee Dibbea *versus* Bamun Dass Mookerjee and others, 30th. Sept. 1850. S. D. A. p. 533.

(5). RIGHT OF ACTION.

88. The natural mother of an adopted son may, as *next friend,* sue to establish his right, legal extinction of maternity notwithstanding. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, S. D. A. v. V. p. 50.

89. A right of action occurs to an adopted son, only from date of actual adoption. Musst. Tareenee *alias* Shaye Maye Dibbea, *versus* Bamun Dass Mookerjee and others, 30th September 1850, S. D. A. p. 533,

90. Decision of the lower court reversed, the plaintiff being debarred from suing during the life-time of the widow of the man under whose will his right arises. Radhamonee Debea and others *versus* Jadubnarain Roy and others, 10th April 1855, S. D. A. p. 139.

91. Application to appear as the adopted son of the next of kin of the alleged adoptive father of the plaintiff, rejected. Rajmoye Chowdryne *versus* Hurnath Roy Chowdree, 20th November 1855, p. 559.

92. A childless Hindoo, by deed, directed his wife to adopt a child. After his death, his widow brought a suit for a partition, and to be put in possession of her husband's share, in the joint undivided estate, pending the suit, she adopted a son. By the Hindoo law, the Act of adoption divested the property from the widow, and vested it in the adopted son, subject to the maintenance of the widow. Notwithstanding the adoption, the suit was prosecuted in the widow's name, and a decree made, directing her to be put in possession. Held, in such circumstances, that she prosecuted the suit as the guardian of the adopted son and was put into possession as his trustee, and accountable to him for the profits of the property so decreed to her. Dhurm Doss Pandey, *versus* Mussumat Shama Soondri (7th and 8th December 1843) M. Indian Appeals vol. III page [229.

93. Under Hindoo law, an adopted son has all the rights of a son born. *Ibid.*

94. Held, that the mere fact of there being authority given her by her husband to adopt a son, did not, before an adoption had actually taken place, supersede and destroy her personal right as widow to sue. Bamundoss Mookerjee, *versus* Mussamut Tarinee. M. Indian Appeals vol. VII. page 287)

95. In a suit to establish a deed of Unoomotee Puttur, although the answer may not traverse the deed and the adoption made in pursuance thereof, yet the Plaintiff must establish his cause by evidence.

Quaere.

96. If under Section 33 of Ben. Reg. X. of 1793 an adoption by a minor and ward of Court of a son, without the consent of the Court of wards, is wholly void. Musst. Anundmoye, *versus* Shib Chunder Roy. 2nd July 1862 M. Indian Appeals vol. IX page 287.)

97. When an adopted son rests his title to succeed to a property, on a confirmatory sunnud, he is bound to prove the sunnud. Maharaja Jogur Nauth Sahaie, *versus* Musst. Mukhun Koomar. 15th May 1865 W. R. vol. III. page 24.

98. There is no bar to the entertainment of a suit for the invalidation of an adoption during the life time of the adoptive father, when the object of the suit is not for possession, but merely for a declaration of title. Baboo Sheonarain Singh and others *versus* Nowlapee Kooer 6th December 1853. Page 671. N. W. P. R.

99. Where a widow who is the heiress in possession of her deceased husband's estate, claims to have a power of adoption, the court will not establish that power against the reversionary heirs of the deceased husband's estate, before an adoption. Sreemuty Rajcoomaree Dosse *versus* Nobocomar Mullick and another. 9th. Dec. 1856. Bulnois's Report. p. 137.

(6.) INHERITANCE

100. Held, that an adopted son is entitled to share collaterally, and the son of an adopted son is entitled to the rights of his father—Kishen Nauth Roy *versus* Hurree Gobind Roy and others. 12th January 1859 page 18 S. D. A.

101. Held, in accordance with previous precedents of the Court, that in Bengal, where the Dayabhaga prevails, an adopted son succeeds collaterally as well as lineally, in the family of his adoptive father, that is, to the agnates or Sapindas of his adopting father, whether he succeeds to the bundhoo, or cognate relation, is not now before the Court. Lukhee Nauth Roy &c. *versus* Shamasoonduree. 30th December 1858 page 1863 S. D. A. Gooroo PershadBose *alias* Hubbeehur Ruhman *versus* Rashbehary Bose 2nd April 1860 (S. D. A. page 411.)

102. The adoption, by one of the widows, of a son, who died in her life-time, interposed no other heirs between Plaintiff and the widows. Koroonamoyee Dassee *versus* Gobind Nauth Roy. 6th July 1859 page 944 S. D. A.

103. The relatives of an adoptive mother inherit the property of her adopted son, just as they would have succeeded to a natural born son. Gongaprosaud Roy *versus* Brijessuree Chowdrain. 30th July 1859 page 1091 S. D. A.

104. Held, that a distinct suit for the recognition of an adoption having totally failed, the plaintiff can have no right to fall back on his right by descend. Sree Gobind Singh *versus* Odit Narain Singh, 19th July 1862. Hay's Report (page 22) H. C. D.

105. A son adopted by a female, without the permission of her husband, has no right to the property of his adoptive mother, until her death. Lutchmun Shahoo *versus* Jubona Bye 13th March 1863 (Hay's Report page 410) H. C. D.

106. An adopted son has all the rights and privileges of a son born, and is also entitled to succeed, to the mothers streedhun in the absence of daughters. A son adopted by one wife may succeed to a co-wife's streedhun—Teencowree Chatterjee *versus* Dinonauth Banerjee 25th May 1865. W. R. H. C. D. vol. III. page 49.

107. An adopted son, under an authority of a deed of permission, takes by inheritance, and not by devise. A son can not be adopted to the great grand-father of the last taken after the lapse of several successive years when all the spiritual purposes of a son, according to the largest con_struction of them, would have been satisfied. Bhooban Moyee Dabea *versus* Ram Kishane Acharjee 26th May 1865. Privy Council Appeal—W. R. vol. III. page 15.

108. One adopted by the *Kritrima* form, which is in use in *Behar*, *Tirhoot*, &c., takes the inheritance both in his own family and in that of his adoptive father. Sri Nath Serma *versus* Radha Kunt, 24th November 1796, S. D. A. v. I. Note. p. 15.

109. A Hindu zemindar in *Bengal*, at his demise without issue, left two widows, the adopted son of his brother, and sons of his half brother. The first widow, and then the son adopted

by her under due authority died. The other widow [who states that she had adopted a son, after the death of the other, under due authority,] sues for the estates left by her husband. Adjudged that to the one moiety, which was the estate of the son adopted by the first widow, she, as step-mother, was not heir; but that she should 'recover the other moiety in her own right.' But query? Narainee Dibea *versus* Hur Kishore Rai, 24th December 1801, S. D. A. v. I. p. 39.

110. A deed of adoption and gift construed not to entitle to possession during the life of the person executing it. Sidh Nurain *versus* Futteh Narain, 16th December 1815, S. D. A. v. I. p. 118.

111. An adopted son succeeds collaterally, as well as lineally, in a family of his adoptive father. Sham Chunder and another *versus* Nurainee Dibeh, 21st August 1807, S. D. A. v. I. p. 209. Gour Hurie Kubraj *versus* Rutnasuree Dibea, S. D. A. v. VI. p. 203.

112. An adopted son, according to the Hindoo Law, is entitled to succeed to his collateral as well as his direct relations by adoption. Sumboo Chunder Chowdry *versus* Naraini Dibea 6th February 1835 (Knapp's Report vol. III) page 55.

113. Claim to an estate on a similar title dismissed; the fact of due authority for the adoption having been delegated by the husband not being established. Musst. Soolukhna *versus* Ram Doolal Pandeh and others, 27th May 1811, S. D. A. v. I. p. 324.

114. A *Nyum-putr*, or declaratory deed, executed by a widow reciting that she had adopted a son under authority from her husband, and declaring that the estate was to remain with her during her life, and to go to the adopted son at her demise, is of no avail in law as regards the widow's claim to retain possession: for immediately on the adoption of a son by the widow, under due authority, the estate to which she succeeded in default of male issue, became the property of the son adopted. *Ibid,*

115. The evidence of witnesses to the fact of an adoption being contradictory, and not supported by circumstantial proof; and the person claiming to have been adopted not appearing in a public document to have been designated as the son of his alleged adoptive father, the presumption will be that the claim

is unfounded. Musst. Sabitra Daee *versus* Suturjhun Sutputtee, 4th August 1812, S. D. A. v. II. p. 21.

116. A person adopted by the husband stands to him in the relation of a son, and is heir to his estate; but does not become the adopted son of the adoptive wife, nor succeed to her peculiar property. Sri Nurain Rai and another *versus* Bhya Jha, 27th July 1812, S. D. A. v. II. p. 27.

117. Nor does the person adopted by the wife, as her son, become the adopted son of her husband, or succeed to his property, not even by the *Mithila shasters*, though the adoption should have been permitted by the husband; but as her son, he will succeed to her property. *Ibid.*

118. On the death of a Hindu widow in possession of her husband's estate claim by A founded on gift and adoption under a written permission of the husband, resisted by B on alleged title of previous gift and denial of the adoption of A. Claim disallowed; proof of permission to adopt being held defective, and the presumption being that, if ever granted, it had subsequently been cancelled. Decision not to bar the claim of the husband's heirs against B, the donee of the widow. Gunga Ram Baduree *versus* Kashi Kunt Rai, 4th February 1813, S. D. A. v. II. p. 44.

119. According to the Hindu law, a son adopted with the permission of her husband by a woman on whom her father's estate had devolved, will not be entitled to take such state on his adoptive mother's death; but such estate will go to her father's brother's son in default of nearer kindred. Musst. Gunga Mya *versus* Khishen Kishore Chowdry and other, 17th December 1821, S. D. A. v. III p. 128.

120. The heirs of a deceased Hindu in *Shahabad* being a real and an adopted son; the adopted son takes one-fourth, and the real son three-fourths of his property. Preag Singh *versus* Ajoodheea Singh, 7th December 1825, S. D. A. v. IV. p. 96.

121. A Hindu widow claimed a share of ancestral property (under an *anoomuttee putr*, or deed of permission to adopt a son, alleged to have been executed by her husband) in behalf of the son whom she might adopt. Held by the Sudder Dewany Adawlut, that, until the adoption was made, no action would lie,

and that the expression of any opinion as to the authenticity of the deed was in the present action uncalled for. Musst. Subudra Chowdryn *versus* Goluknath Chwdree and another, 28th December 1843, S. D. A. v. VII. p. 143.

122. Power of adoption in a widow does not, *per se*, divest her of her life interest. Musst. Tareenee *alias* Shaye Monee Dibbea *versus* Bamun Dass Mookerjee and others, 30th. September 1850. S. D. A. p. 533.

(7). LIMITATION.

123. The Statute of Limitation applies to suits raised to challenge an adoption.—*Chocummal* v. *Surathy Amay and another.*—22d April 1854.—*Id.* 1854, p. 31.—Morehead and Strange.

124 Held that a suit brought to set aside an adoption, upwards of 12 years after such adoption had been declared, with the full knowledge and in the presence of the parties suing, cannot be admitted. Gobind kishore Roy *versus* Radhamadhab Audhecary. 26th May 1856. S. D. A. page 450.

125. A suit to set aside the adoption of a second son must be made within 12 years from cause of action. Radhakishen Mohaputtra *versus* Sreekishen Mohaputtra. 31st August 1864 (W. R. volume I page 62).

(8). LIABILITY.

126. But if the husband and wife jointly appoint an adopted son, he stands in the relation of a son to both, and is heir to the estate of both. *Ibid*, S. D. A. v. II. p. 27.

127. A childless Hindu widow, taking the entire estate of her husband, is restricted from alienating the same by sale or otherwise, except for the obsequies of her husband, or her own maintenance, unless with the sanction of her husband's heirs. Gocul Chund Chuckerbutty *versus* Musst. Raj Ranee and another, 27th January 1816, vol. II. p. 167.

Musst. Depoo *versus* Gowree Shunker, 23rd February 1824, S. D. A. v. III. p 307.

128. According to the Hindu law current in *Mithila*, a brother cannot be adopted by a brother, for the person to be adopted must bear the 'reflection,' of son, or the resemblance of son,—*i. e.* the capability to have sprung from the adopter himself, or be one who, by a legal marriage of his mother, might have been the legitimate son of the adopter. Baboo Runjeet Singh, *versus* Obye Narain Singh, 26th July 1817, S. D. A. v. II. p. 245.

129. An adopted son is not actually precluded from ever questioning Acts done by his mother during his minority or before his adoption, in the same manner as any other reversioner might question such Acts; yet a sale by a widow, with the consent of all legal heirs at the time existing, and ratified by decrees of Courts, is binding on reversioners as well as on an adopted son adopted long after the sale. Rajkristo Roy, *versus* Kishoree Mohun Mojoomdar 15th May 1865, W. R. vol. III. page 14.

130 Held, that an adopted son is liable for debts contracted by the widow as proprietor of the estate, when such debts are contracted under necessity, and for the benefit of the estate. Manick Mulla Chowdhrain, *versus* Parbuttee Chowdhrain (page 515) 28th April 1859, S. D. A.

THE END.

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THE

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AND

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ON

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BY

J. C. C. SUTHERLAND, ESQR.

WITH

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